

## COUNCIL MEETING

NOVEMBER 19, 2014

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, November 19, 2014 at 10:10 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Mason K. Chock, Sr.  
Honorable Gary L. Hooser  
Honorable Ross Kagawa  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro (*excused 5:08 p.m.*)

### APPROVAL OF AGENDA.

Councilmember Kagawa moved for approval of the agenda as circulated, seconded by Councilmember Rapozo.

Council Chair Furfaro: I have a motion and a second. Any discussion?

The motion for approval of the agenda as circulated was then put, and unanimously carried.

Council Chair Furfaro: Now I am going into the eighteen (18) minutes public comment period. If you could just raise your hand when I call your name if you are intending to speak, so I can put it in some kind of order. If you are going to speak on the Executive Session dealing with the Auditor, just raise your hand so I know what order I am going to be doing this. Mr. Mickens? Yes. Joe Rosa? Yes. Gary Pierce? Yes, are you going to speak on the Executive Session dealing with the Auditor? That is all I need to know right now then. Ken Taylor? Yes. Gary, I am going to put you first to come up and speak, and then I am going to recuse myself and turn it over to Mr. Chock for the other items. You can come up first, please.

### PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

There being no objections, the rules were suspended to take public comment.

Council Chair Furfaro: Here is your three (3) minutes for the public comment period. Go right ahead.

GARY PIERCE: Gary Pierce for the record. There are many items to talk to on this agenda. I am going to try to keep a theme that "less government is better government" and is a less expensive government. I want less government and not more intrusive government coming into my life. This is the theme. I am going to try read through all of these bills here. Bill No. 2546, this is the one on Agronomics. It is another classification for rates. It is a poorly written law, complicated, without really knowing the technology that is being used for some of these large companies. This new rate captures both large and small farmers while only adding to the burden of the tax office. These companies are not only seed companies anymore, but they are pharmaceutical and vaccine companies now on our island. I gave you some of that information earlier. Anyway, I will not go into the Genetically Modified Organism (GMO) aspect of this.

Bill No. 2557, Draft 2 and Bill No. 2559, Draft 2. Bill No. 2557, Draft 2 is the property tax credit for low income. Bill No. 2559, Draft 2 is the property tax on use. Again, these bills are adding in the complexity of the property tax rate classification and does nothing to simplify the entire system. Again, if you were interested in the low income, the property owner should be charged low income homestead rate even if the property is rented and the property owner is low income, meaning that if the property owner is a low income person and is renting out a room, and they are still classified as low income with all the gross revenue coming in, they should still get the Homestead rate. All of these laws you have written, if there is a widower in a house and she rents out the room just to get by, it is still going to be at the higher Residential rate versus the lower Homestead rate. That is just one (1) thing. I mean, these are stop-gap measures right now along with this Agronomics Bill. It should be written in a comprehensive bill and to redo everything because like Jay Furfaro said, this is a mummy with patches all over it. It needs to be redone, simplified, and taken to the next step.

Again, the property tax system needs to be overhauled. The voters still have the initiative process. I know it was overturned. The tax bill should be simple. No more than three (3) to five (5) paragraphs on a single piece of paper. It has to be simple, straight forward where everybody can see it and understand it. What we do not need is more appraisers. Steve Hunt wants three (3) more personnel and we have another Bill, Bill No. 2565, for another one hundred thousand dollars (\$100,000) just is software. We need smaller government. We do not need complicated systems. A tax rate is you go to the store, it is four point one seven percent (4.17%), we know exactly what it is, and we can go on. The two (2) Mayor appointments.

RICKY WATANABE, County Clerk: Three (3) minutes.

Council Chair Furfaro: That is the three (3) minutes. I will give you another thirty (30) seconds if you can, Gary.

Mr. Pierce: Again, I am just going to say that we need smaller government, more intrusive government. We do not need to make bills more complicated that higher more personnel. That really does not add anything to our bottom line. Again, I just want to say something about the Shoreline Setback Bill. Again, the shoreline setback, I am for, but you try to make another bill into a view plane bill. If you are going to call something a shoreline, be a shoreline setback and if you have a view plane, call it a view plane. Do not complicate things that it makes it so complicated people do not understand it, and it adds to the bureaucracy. Thank you very much for the extra time. I do appreciate it. Thank you very much, Council, for this time.

Council Chair Furfaro: Thank you.

Mr. Pierce:  
that too. Thank you.

And your information, Chair, I appreciate

Council Chair Furfaro: Mr. Chock, these three (3) speakers have signed up. I am going to leave, and someone can call me in the back room.

Councilmember Chock: We will call you right back. Thank you, Chair.

Council Chair Furfaro, the presiding officer, relinquished Chairmanship to Councilmember Chock.

Council Chair Furfaro was noted as recused.

Councilmember Chock: We will go to the next speaker that you have on your list. I have on my list here, Ken Taylor. Ken. Yes. Let me look at this. Hold on.

Mr. Watanabe: I believe the order was...

Councilmember Chock: Mickens?

Mr. Watanabe: Glenn, Joe Rosa, and Ken Taylor.

Councilmember Chock: Okay, we will go in that order. Glenn, you are first.

GLENN MICKENS: Thank you, Mason. For the record, Glenn Mickens. I too, first want to say thank you to Tim and to Jay for all of their efforts. As Mel said, we do have our differences, but that does not mean I do not appreciate the time and effort you folks have spent on the Council. I want to say *mahalo*, Tim and Jay, when he comes back in.

You have a copy of my testimony. Let me please read it for the record. Here we are again today for the unprecedented 31<sup>st</sup> Executive Session of the Ernesto G. Pasion vs. County of Kaua'i, et al. At least there appears to be a light at the end of the tunnel since the agenda states, "...with a briefing and request for authority to settle the case..." Hopefully, this light is not just another train entering the picture, but that is to be seen. As has been said many times, there would have been no need for any Executive Session if our Auditor, in doing his job he was hired to do, had not uncovered illegalities with the gasoline audit. With apparent wrong doings going on in this issue, including Hawai'i Revised Statutes 78-9, it is interesting to note that neither this Council nor any Attorney General, which Gary Hooser was good enough to call, wants to get to the bottom of it, and the Prosecuting Attorney for that matter. The gas audit pointed the finger at our Mayor who triggered the thirty-two percent (32%) cut to the Auditor's budget, thus forcing the lawsuit by Mr. Pasion to keep his job. If the end of this issue is now in sight, it will be a relief for all of those involved. The only losers will be the taxpayers who will foot the bill for the settlement and sadly, if wrong doing had not taken place none of this would have happened.

In closing, I want to say that the Councilmembers who hired Ernie Pasion in 2010 made the wisest choice they ever made. The caliber of work he did in those four (4) years along with the honesty, integrity, and dedication he brought to his job was unparalleled. Hopefully, this Council will help end this debacle and get Ernie back doing what he does best –looking after the best interest of the people of Kaua'i.

Obviously, that has been my theme. I think that is a lot of what this is, this theme continually, that we hired a man to do the job, he did his job, and it is regrettable that this whole issue has to continue like this. Hopefully, in this Executive Session, you folks will be able to give finality to it. Thank you.

Councilmember Chock: Thank you.

Mr. Mickens: Thank you, Mason.

Councilmember Chock: Mr. Rosa.

JOE ROSA: Good morning members of the Council. For the record, Joe Rosa. This is some sort of a record, I guess. Executive Session number thirty-one (31). It has been going on now for the last two (2) years plus or minus. It is something that from the start the person that did his job was not getting credit or looked at it with all of the complements that was given to the Auditor of his work. I say this because it came out in the papers, and yet, all of these Executive Sessions has not accomplished anything but using taxpayers' money and not come to a solution after thirty (30) meetings. Now, thirty-one (31) is coming up. He was hired by this Council after the Charter was amended to where we have a County Auditor. He did his job, he exposed the wrongs, and like I know with the Federal government because they are strict on everything. Anything you try to sweep under the rug when it comes to do with money, you will be held accounted for it. What was uncovered, you found the errors, you found the wrong, and it should be corrected. It has been so long and it is just a matter of personalities because this all came about when a former worker in the Auditor's Office was dismissed or he resigned and he went ahead and sued the County and the Auditor's Office without prejudice. Now, it seems that it was an opportune time because the Kilauea Gym audit and the so-called controversial "gas card" thing. It seems that it probably is a good chance to eliminate the Auditor's Office of eliminate the Auditor, which is uncalled for because it has to do with personalities between within the Department and within the County personnel looking at it because he started to lock the Office of the Mayor with all the audits that he uncovered the errors. Instead of taking it into the hands and get to the bottom of it, nothing has been done for all of these years. It is high time that the decision is made with the Auditor's Office. Like I just said, and the former Judge Laureta said, you need just cause in a court of law.

Mr. Watanabe: Three (3) minutes.

Mr. Rosa: No just cause will not be sufficient.  
Personalities are out of the picture...

Councilmember Chock: Three (3) minutes, Mr. Rosa.

Mr. Rosa: I will wrap it up. Anyway, thank you for that. Jay withstood my testimony along with Mr. Bynum. I know sometimes I am a thorn on the sides of this Council, but I speak for the people of Kaua'i. Thank you.

Councilmember Chock: Thank you. Lastly, Mr. Taylor.

KEN TAYLOR: Chair and members of the Council, my name is Ken Taylor. I am glad to see we are moving forward with consideration of bringing this issue to closure. It is long overdue. One of the issues that has come up with the Auditor is the gas issue. That problem stays out there and has not been addressed by you folks. I want to make it very clear that if you are not part of the solution, then you are part of the problem. I think it is time that you address this issue and bring



closure to it also as we move forward. Hopefully, you will approve the Draft 2 of Bill No. 2546. Oh, I am sorry. That is the wrong one. ES-772, moving forward with negotiations to settle this claim. Thank you for your time.

Councilmember Chock: Thank you. Anyone else would like to speak at this time, public comment period? Are you going to speak on the Executive Session as well? Please come. No, you can speak on it now if you would like, at public comment. It is up to you. I was just going to say if you are going speak on another item, I can call Council Chair Furfaro back. I know. I am trying to clarify that with him. Maybe you can come up to the front and I can clarify that. Uncle Kaipo, if you want, you can speak now on the item, but then you will not be able to speak later according to the rules that we have in place. You can have your three (3) minutes now or if you would like to wait for the item. I am not sure exactly what time it will come up on the agenda.

BILL "KAIPO" ASING: Do you have any rough idea of when it would come up? Would it be in the next two (2) hours or would it be in the next ten (10) minutes?

Mr. Watanabe: 1:30 p.m.

Councilmember Chock: It is scheduled for 1:30 p.m.

Mr. Asing: 1:30 p.m.

Councilmember Chock: Will you be back?

Mr. Asing: No. Let me...

Councilmember Chock: We will take your three (3) minutes now.

Mr. Asing: Let me see if I can do it in that timeframe. Good morning and thank you. For the record, Bill "Kaipo" Asing. I just want to read this item. This is the Resolution appointing the County Auditor, which is dated September 16, 2009. I just want to read from this item here. This is a comment from Councilmember Furfaro. "Yes, thank you Mr. Chair and before we find ourselves taking public testimony, I want to thank you for the relatively appropriate and timely selection of our candidate that is in the Resolution today. I believe that you know I was very active in introducing to this full Council the idea of our own audit department that would be part of the legislative branch of government for the purpose of monitoring some of our single biggest cost in the County. In particular, payroll staffing guides, also being able to read and make projections off of special funds that we are obligated to manage from other political subdivisions..." "And I wanted to say that I am very pleased with the process and certainly the outcome with Ernie being identified as the County Auditor." "They had the right credentials," all of them. This is Councilmember Furfaro speaking. "...in place and the right work in place. I also think that although we spent a lot of time on the interviews, we did narrow it down to three (3) finalists and through the interview process and responses to certain questions, Ernie certainly showed that he was fully ready to accept and he has always, always, in my opinion, showed, you know, he is very focused on the particular requirements without bias to getting his work done here at the Council and his financial background will only be a very big plus for what will be accomplish." This is Councilmember Furfaro speaking about Ernie.

I want to read to you Councilmember Bynum's comments speaking on this item. "I just want to assure you that the Committee had three (3) very strong

candidates that we interviewed. Ernie meets all of the requirements. Ernie has, as you mentioned, the integrity, and he fully understands the independent nature ... one of the strongest...you know, one of the strongest positions that he shared with us was that this position is independent...”

Councilmember Chock: Uncle Kaipo, that is three (3) minutes already. If you can wrap it up too.

Mr. Asing: Okay. It should not take me long to wrap up this portion here. “...he understands that it is potentially controversial, and may be in the lime light, and I have every faith in the world that he has the independence and understands that role, and really has an opportunity to shine. You know, one of the joys for me of working on Council has been meeting Ernie and his depth of his understanding and knowledge he has maybe been a little underutilized in his current position, and I think he has a real opportunity to shine.”

Councilmember Chock: Thank you.

Mr. Asing: “So, I want to assure you that he totally meets the criteria, he interviewed very strong, and there are some advantages with his knowledge of the internal workings of the government. But we have to respect the professionalism...”

Councilmember Chock: Uncle Kaipo, I have to stop you.

Mr. Asing: “...of the people that work for the County.”

Councilmember Chock: Sorry. I have to stop you.

Mr. Asing: Thank you. I just want to read what Councilmember Bynum and Councilmember Furfaro said at that meeting. We all voted, and it was 7:0, all Councilmembers.

Councilmember Chock: Thank you.

Mr. Asing: Thank you.

Councilmember Chock: Alright. Anyone else for public comment period? Seeing none, if someone can call Chair Furfaro back.

There being no further public comment, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: We will move forward on the agenda. If I could get an approval of the minutes of October 15, 2015. Hold on one (1) second. Monty, did you want to speak during public comment? Absolutely. Public comment is open to any item on the agenda. Okay. He is coming back. He is on his way, I am sure. We are going to take a recess until he gets back. He is on his way.

There being no objections, the meeting recessed at 10:32 a.m.

The meeting reconvened at 10:33 a.m., and proceeded as follows:

Council Chair Furfaro was noted as present.

Council Chair Furfaro: We are back and we are still at public comment. Dr. Downs.

There being no objections, the rules were suspended to take public comment.

MONTY DOWNS, M.D.: I am Monty Downs, President of the Kaua'i Lifeguard Association (KLA). My comments are a no-brainer. I forget what agenda item it is, but it is kind of far down there a little bit. The Kaua'i Lifeguard Association wants to donate two (2) All-Terrain Vehicles (ATVs) to the County of Kaua'i for the lifeguards to use. It turns out they rust out quicker than our budget people anticipated and it could not afford to wait until next June and the next budget to start asking for them. They are in desperate need right now on the North Shore. It sounds like I am the nice person here in making the donation, but I am not. I am just the Public Relations (PR) person. There are donors that I turn to at times like this and who believe very deeply in ocean safety, and who strongly support us. I will just mention some of them. The Westin Princeville is one, the Visitor Industry Charity Walk is another, Dukes Restaurant, and we have a couple of anonymous donors that I can turn to at times like this and also quite a few fifty dollars (\$50) to two hundred dollars (\$200) donors that contribute on a yearly basis. Anyway, we were able to purchase two (2) ATVs and wish to donate them to the County of Kaua'i. Thank you.

Council Chair Furfaro: Thank you, Monty, Dr. Downs. There is no comment at this time, but I would like to say, thank you very much for accelerating that offer.

Dr. Downs: Alright. Thank you.

Council Chair Furfaro: Is there anyone else signed up?

Mr. Watanabe: No, this was the last speaker because he is the sixth speaker.

Council Chair Furfaro: Okay, this is the last on this.

There being no further public comment, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: We will move to receive the public comment period and we will go to the Minutes.

MINUTES of the following meeting of the Council:

October 15, 2014 Public Hearing re: Bill No. 2560

Councilmember Rapozo moved to approve the Minutes as circulated, seconded by Councilmember Yukimura.

Council Chair Furfaro: We have a motion to approve and a second. Any discussion?

The motion to approve the Minutes as circulated was then put, and unanimously carried.

Council Chair Furfaro: Next item, please.

CONSENT CALENDAR:

C 2014-284 Communication (10/22/2014) from the County Engineer and the County Capital Improvement Project (CIP) Manager, transmitting for Council consideration, proposed amendments to Ordinance No. B-2014-782, as amended, relating to the Capital Budget of the County of Kaua'i, for the Fiscal Year 2014-2015, by revising the amounts estimated in the Bond Fund. (*Moana Kai and Pono Kai Seawall – \$1,600,000*): Councilmember Chock moved to receive C 2014-284 for the record, seconded by Councilmember Yukimura.

C 2014-285 Communication (10/30/2014) from the Housing Director, transmitting for Council consideration, proposed amendments to Ordinance No. B-2014-781, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2014-2015, by revising the amounts estimated in the Housing and Community Development Revolving Fund (HCDRF). (*Housing Agency, Special Projects – \$35,877*): Councilmember Chock moved to receive C 2014-285 for the record, seconded by Councilmember Yukimura.

C 2014-286 Communication (10/30/2014) from the County Engineer, transmitting for Council information, the following monthly Building Permit Reports for the months of May, June, July, August, and September 2014:

- (1) Building Permit Processing Report – Information on quantity and value of incoming applications, value of permits issued, and status of Revolving Fund;
- (2) Building Permit Estimate Value Summary – Graph of Building Permit estimated values over a one (1) year period;
- (3) Building Permit Tracking Report – Summary of processing times overall and by Agency for all permits issued during the reporting period; and
- (4) Building Permits Status: All current open applications – Summary review times overall and by Agency for all outstanding permit applications.

(Copies on file in the County Clerk's Office.)

Councilmember Chock moved to receive C 2014-286 for the record, seconded by Councilmember Yukimura.

C 2014-287 Communication (11/07/2014) from the Director of Finance, transmitting for Council consideration, proposed amendments to Ordinance No. B-2014-781, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2014-2015, by revising the amounts estimated in the General Fund. Funds will be used by the Department of Finance, Real Property Assessment Division for Assessment Analyst software to assist with the identification and collection of data associated with unassessed improvements of real property. (*Real Property Assessment Software – \$100,000*): Councilmember Chock moved to receive C 2014-287 for the record, seconded by Councilmember Yukimura.

C 2014-288 Communication (11/13/2014) from Council Chair Furfaro, transmitting for Council consideration, a Resolution supporting the preservation of the character of Hanalei Bay by restricting the use of large vessels that are operating within the Bay: Councilmember Chock moved to receive C 2014-288 for the record, seconded by Councilmember Yukimura.

C 2014-289 Communication (11/13/2014) from Council Chair Furfaro, transmitting for Council consideration, a Resolution supporting a low interest loan program to assist in the conversion of cesspools to septic systems for Kaua'i residents: Councilmember Chock moved to receive C 2014-289 for the record, seconded by Councilmember Yukimura.

Council Chair Furfaro: I have a motion to receive and a second.  
Discussion members?

The motion to receive C 2014-284, C 2014-285, C 2014-286, C 2014-287, C 2014-288 and C 2014-289 for the record was then put, and unanimously carried.

Council Chair Furfaro: We will go to page 2, Mr. Clerk.

Mr. Watanabe: Yes, we are on Communications.

COMMUNICATIONS:

C 2014-290 Communication (09/04/2014) from Councilmember Yukimura, requesting Council consideration, for the public release of the County Attorney opinion dated July 29, 2014, relating to Bill No. 2546, Draft 1: Councilmember Kagawa moved to approve C 2014-290, seconded by Councilmember Rapozo.

Council Chair Furfaro: Would you repeat that one (1) more time please, Rick?

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Chair,  
did you want the Communication read again?

Council Chair Furfaro: Yes. I think that is for clarification with Mr. Rapozo.

Councilmember Rapozo: No, just we are on item C 2014-290, right?

Ms. Fountain-Tanigawa: C 2014-290, yes.

Councilmember Rapozo: Okay, I am good.

Council Chair Furfaro: You are good with that? Okay. We have a motion to approve C 2014-290?

Councilmember Yukimura: I will second it.

Councilmember Rapozo: I made the second.

Councilmember Yukimura: Oh, I am sorry.

Councilmember Rapozo: He made the motion, I seconded it.

Councilmember Yukimura: Okay. Thank you.

Council Chair Furfaro: We are square here. Any further discussion here?

Councilmember Yukimura: Is the County Attorney here?

Council Chair Furfaro: County Attorney, may we have you up, and may I ask you to bring your guest today? He is in the *aloha* attire, but if can introduce him on camera, I would appreciate it.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, First Deputy County Attorney: *Aloha* Chair and Honorable members of the County Council. For the record, First Deputy County Attorney, Mauna Kea Trask. To my right is our new Deputy County Attorney Adam Roversi. He is from Kilauea and a very intelligent individual. We are happy to have him aboard.

Council Chair Furfaro: JoAnn.

Councilmember Yukimura: Could we have a little bit of Adam's background.

Mr. Trask: Sure. Here Adam, how about you press the microphone.

ADAM ROVERSI, Deputy County Attorney: *Aloha.* I moved to Kaua'i with my family when I was eighteen (18) and worked on the family farm outside of Kilauea for many years. I used to sell vegetables at the Sunshine Markets around the island. I transitioned to residential building construction and was a building contractor for many years on the North Shore before five (5) years ago venturing to O'ahu to go to law school where I went to University of Hawai'i (UH) Law School. After law school I worked for a year with Chief Judge Nakamura at the Intermediate Court of Appeals. Then, I worked for another year with Federal Judge Kurren in Federal Court in Honolulu, and just finished a stint with Chief Judge Recktenwald of Supreme Court. I am here on my third of work and happy to be here. Glad to be back home.

Councilmember Yukimura: Thank you. Welcome.

Council Chair Furfaro: Any other questions for Adam? Adam, I would just like to say welcome, and I do want you to know that the *aloha* attire is fine with me. If we can get the other attorneys to follow your lead, it will give us a real sense of place. Welcome.

Mr. Roversi: I do not know if any of you ever met ex-Chief Judge Burns of the Court of Appeals, but he was very old school. He is now retired. He used to see me around Honolulu in my coat and tie, and told me when he saw me next with a tie, he would hang me by it.

Council Chair Furfaro: Live *aloha, braddah.* Go ahead. Thank you, Adam.

Mr. Roversi: Thank you.

Council Chair Furfaro: We called Mauna Kea up for some specifics here.

Councilmember Yukimura: May I? Mauna Kea, are you able to advise us on this opinion that is before us?

Mr. Trask: I am sorry again. Could you redirect me to what we are talking about right now?

Councilmember Yukimura: It is C 2014-290, release of the County Attorney opinion dated July 29, 2014, related to Bill No. 2546, Draft 1.

Mr. Trask: No, I am not prepared to answer that. If you would like, we can move this down the agenda. I can contact Deputy County Attorney Mona Clark, and she can be here.

Councilmember Yukimura: Yes, I think we need to have clear County Attorney advice. I understand there was going to be an announced shift in the recommendation from the County Attorney's Office. I just want to get clear what the recommendation is.

Mr. Trask: Okay. Can you give me a moment?

Councilmember Yukimura: Thank you.

Council Chair Furfaro: You are going to take a moment now, Mauna Kea? Okay. We are going to recess for three (3) minutes. Do not anybody move from their chair.

There being no objections, the meeting recessed at 10:40 a.m.

The meeting reconvened at 10:41 a.m., and proceeded as follows:

Council Chair Furfaro: We are going to move onto the top of page 3 and try and move through some items.

Ms. Fountain-Tanigawa: Chair, this is the top of page 3.

There being no objections, C 2014-291 was taken out of order.

C 2014-291 Communication (10/29/2014) from the Fire Chief, requesting Council approval to accept and utilize a donation from the Kaua'i Lifeguard Association (KLA), of two (2) All-Terrain Vehicles (ATVs), valued at seven thousand five hundred dollars (\$7,500) each for a total of fifteen thousand dollars (\$15,000): Councilmember Chock moved to approve C 2014-291 with thank-you letter to follow, seconded by Councilmember Yukimura.

Council Chair Furfaro: I have a motion to approve and a second by JoAnn. Chief, may I ask you to just come up for a second?

There being no objections, the rules were suspended.

Council Chair Furfaro: I just want to reconfirm. This is what Dr. Downs was referencing during the public comment period. Are these the same ones?

ROBERT F. WESTERMAN, Fire Chief: Yes, sir. For the record, Robert Westerman, Fire Chief.

Council Chair Furfaro: Do you want to add anything to his discussion? It seems that the equipment is being exhausted because of maintenance problems quicker than we anticipated. Is that correct?

Mr. Westerman: That is correct. One of the things that they did do on this particular two (2) that they ordered, there is a protection plate that is underneath the front of the ATVs. It is normally used for big off-road things hitting rocks, that kind of things. They are going to take that plate off so that the sand and salt does not stay up under and they can wash it better. We are hoping that provides

us a little bit more longevity. It is in a salty environment. It is running up and down the beaches in the salty waves and water every day. Unless we buy the speed it all aluminum racers, which I do not think would look good running up and down our beaches, this is pretty much what we are going to have to deal with. We are trying to extend the life by doing some modifications.

Council Chair Furfaro: Okay, I guess that is really what I wanted to hear. The removal of the plate, and I understand the concern that the salt stays in the bed under the motor mount and then in fact, it draws on salt which causes accelerated corrosion, but if we remove the plate, we need to have other issues addressing not hitting the bottom of the motor mount on any rocks. Sounds like you got it under control. Any other questions for the Chief? JoAnn.

Councilmember Yukimura: Hi Chief.

Mr. Westerman: Hi.

Councilmember Yukimura: Is that where the rust is developing, underneath?

Mr. Westerman: Yes. The rust kind of develops all over the vehicle.

Councilmember Yukimura: Okay.

Mr. Westerman: Any of the metal parts, but this is one of the worse places.

Councilmember Yukimura: I see.

Mr. Westerman: That is develops, yes.

Councilmember Yukimura: Is there a set procedure in terms of at the end of the day washing it down and covering it?

Mr. Westerman: Yes, there are hosed down. The equipment is hosed down at the end of the day and most of the ATVs are hauled back to the jet ski *hale* at the end of the day.

Councilmember Yukimura: So, they are actually in a sheltered area during the night?

Mr. Westerman: Well, they are not exposed on the beach. They are not put away. Some of them are depending on where they are. In Hanalei, we have the big jet ski *hale* and in Po'ipū we have the big jet ski *hale*, but they are full of equipment so not everything gets put away. One of the proposals that we are coming up with in Kē'e as an example of that is putting in storage sheds at the sites so they get washed and put inside a facility every day. Keālia, we currently do that at Keālia. We put the jet ski and the ATV inside a building away from the environment after we wash it at the end of the day.

Councilmember Yukimura: Are those in better shape?

Mr. Westerman: Yes, generally. Just the ATVs...

Councilmember Yukimura: Get a lot of use?



Mr. Westerman: They just get a lot of use and I hate to say abuse, but when they are out in that salty sand and running up and down that beach every day, there is just not much we can do about it, even our trucks sitting up on the beach. That is why we are trying to go to mostly ATVs because replacing the truck that just literally rots around us in two (2) to three (3) years being on that salty beach front every day. We are trying to replace it with something else if we can.

Councilmember Yukimura: The ATVs are actually a lot cheaper, right?

Mr. Westerman: Yes, a lot cheaper.

Councilmember Yukimura: Yes.

Mr. Westerman: Well, they are expensive, but they are cheaper than a truck.

Councilmember Yukimura: Than a truck. As long as they serve all of the needs. Alright. Thank you very much.

Council Chair Furfaro: Any other questions of the Chief?  
Mr. Kagawa.

Councilmember Kagawa: I kind of related to what you said about the truck. I am kind of picturing some areas because I have not seen exactly where we park these trucks. Do they park right next to their tower or what have you?

Mr. Westerman: During the day, some of them yes, are parked near the tower.

Councilmember Kagawa: I mean, I guess my question is, is there any way to maybe not park the truck so close in proximity to the beach so that they are not exposed to, I guess, direct mist from the waves? I do not know. If rust is really affecting it that bad, if we can maybe strategize where we park the vehicle so that they do not rust so quickly, I guess.

Mr. Westerman: That is a very good point, Councilmember. We actually are working on that. That is one of the issues that having those trucks parked there because all of the emergency equipment is on the truck. So, it cannot be parked two (2) blocks away. It needs to be parked close.

Councilmember Kagawa: Okay, I understand.

Mr. Westerman: The idea is to replace the truck with ATVs and then store them in a facility there, but still during the day, they are going to be exposed.

Councilmember Kagawa: Okay. Thank you.

Mr. Westerman: Yes, thank you.

Councilmember Chock: Follow-up.

Council Chair Furfaro: Go right ahead.

Councilmember Chock: Just a follow-up Chief. I thought you said that you have a procedure already to take care of the rust that is coming off from

underneath and that is most exposed. Is there an undercoating that you folks apply after market?

Mr. Westerman: No, and we have a little bit of a coating that gets out on it at the factory. We looked at different opportunities to do that, but we have not gotten anybody to give us a very good price on under coating, and they are not sure how effective it is going to be because even the things that get put on by the factory, because it is running through that, it is like sand paper. It just takes it right off.

Councilmember Chock: Right off.

Mr. Westerman: Yes. It just literally takes it right off. That is the areas that get really bad, is all in that front axels, controls arms, and all of that things that gets rusted because it literally just gets sandblasted right off of the equipment.

Councilmember Chock: Okay.

Council Chair Furfaro: Any other questions? Chief, thank you very much. Is there anyone in the audience that wants to testify on this item?

There being on one present to testify on this item, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: We have a motion to approve with a thank-you letter accordingly. Any further discussion from the members?

The motion to approve C 2014-291 with thank-you letter to follow was then put, and unanimously carried.

Council Chair Furfaro: Chief, we are all squared away. Thank you. Next item as we still wait for Mauna Kea or are you waiting for Mona? If you are waiting for Mona, just tell me. Thank you. We will continue with the agenda.

C 2014-292 Communication (10/30/2014) from Council Chair Furfaro, requesting the presence of the Director of Economic Development, to provide the Council with a briefing and update relating to the Kilauea Agricultural Park: Councilmember Kagawa moved to receive C 2014-292 for the record, seconded by Councilmember Yukimura.

Council Chair Furfaro: There is a motion and a second to approve –I mean, to receive. I am sorry. Let me ask, George, are you prepared to give us a presentation and an update? I guess, Keone may be joining you.

There being no objections, the rules were suspended.

GEORGE K. COSTA, Director of Economic Development: Aloha, good morning Chair Furfaro and Honorable Councilmembers. For the record, George Costa, Director for the Office of Economic Development. I am here today with Keone Kealoha of Malama Kaua'i, who is the organization that is overseeing this project and a grant that we currently have through the Office of the Economic Development. It goes through Malama Kaua'i. Yoshito L'Hote, who is the Executive Director and actually the Project Manager, sends his regards. Unfortunately, he is not here today. He actually left last night for Switzerland for his sister's wedding. Otherwise, he

would have been here today. What we are going to do is provide an update to the Council. What I wanted to do, on our first slide, is just talk about the project itself.

*(Councilmember Kagawa and Council Chair Furfaro were noted as not present.)*

Mr. Costa: Really, after thirty (30) years and hearing the Kilauea community really wanting to have this project, the Kilauea Agricultural Park Project, come to fruition. It really is the community project that will benefit all of Kaua'i. Working in partnership with the County of Kaua'i, that also provides affordable land for local farmers and residents to not only grow their own food, but also provide an agricultural economic opportunity. Today's presentations, we have four (4) parts that we want to review with you. The first part is the Stewardship agreement update.

*(Council Chair Furfaro was noted as present.)*

Mr. Costa: Just providing you an update on what the requirements of the Stewardship Agreement entails, what we have done to-date, and some of the things that are ongoing. Also, provide you with an update on the governance. At our last presentation Malama Kaua'i is the umbrella for this project, but in the meantime, the members of the Kilauea Community, the farmers, the residents, and business people were in preparation of putting together a non-profit group and they have put together their Articles of Incorporation and bylaws. I am going to have Keone speak to that when we come to that section. Then, we are going to go into the site plan itself and look at the various phases. The first part will be comparing the agricultural park that was initiated from my predecessor, Beth Tokioka, when she was the Director working with Kimura International, Inc. and the community in coming up with a plan. Now it is in the hands of the community group. They have used a lot of the different facets of that plan, but kind of molded it into their own plan, and that is why in the first slide I put in parenthesis there, it was originally called the Kilauea Agricultural Park. Now we are calling it the Kilauea Agricultural Center. Then finally, the financial plan, looking at the different phases and looking at how the County grant of one hundred thousand dollars (\$100,000) will be spent. Also, Keone can speak to the State grant-in-aid that they applied for and received, and how that money is going to be spent.

As far as the Stewardship Agreement, I am not going to go through all of the details, but I just wanted to point out that some of the requirements as far as getting the insurance requirements, insurance liability or liability insurance, that has been completed. Designate a supervisor for daily operations. Again, that is Yoshito L'Hote. We really have not or they have not been on the property itself to start any clearing, but we hope to start that in the next few months. As far as working with the Office of Economic Development, keeping track of the project and what they have been doing, that is ongoing. They also have engaged other Kilauea community organizations as well as businesses and started a ground swell of support for this project. In speaking to Yoshito and Keone, really, once the organization starts to clear some of the land and to put in the water meters, they feel a lot more of the community and the island will be in support of this project once they actually see something being done. There are some requirements that we really want to stress with the organization, that no work or structures are to be built unless it is approved by the Office of Economic Development. Then from the County of Kaua'i standpoint, Office of Economic Development, we do provide some funding support for the organization.

*(Council Chair Furfaro was noted as not present.)*

Mr. Costa: Some of it relates to the actual infrastructure of this area. It is County property and from the Office of Economic Development, we want to help do our part to at least get the initial infrastructure in place to assist with the development of this agricultural center.

As far as Articles of Incorporation, I have just listed some high points of the Articles of Incorporation and bylaws. I am going to turn it over to Keone right now to just kind of walk us through and some of the process that they have recently done.

KEONE KEALOHA, Executive Director, Malama Kaua'i: For the record, my name is Keone Kealoha, Executive Director of Malama Kaua'i. We did file the Articles of Incorporation for the entity which will become a 501(C)(3) non-profit organization, 'Aina Ho'okupu O Kilauea. Once that entity is fully registered by the Federal government, then we will look at transitioning the Stewardship Agreement over to that entity, and that will come in time. It can take anywhere from eight (8) to eighteen (18) months, maybe to form the non-profit. Just depending on what steps we have to go through. I think in the original agreement, it have a two (2) year horizon. We feel confident that we will be able to create the entity and get its recognition within that window of time. We have created a Board of Directors for the organization. We did file the necessary Articles of Incorporation and bylaws with the Department of Commerce and Consumer Affairs for the State of Hawai'i, which allows the entity to become fiscally sponsored by our registered non-profit. We did the direction of engaging with most of the original agricultural park founders, which include Ben Ferris, Jack Gushiken, Gary Smith, David Sproat, and Rodney Yadao, and they are reflected in the Board of Directors and also in the officers. What we hope is that having a mix of the original initiators of this project and some of the newer folks in the community, we will be able to come up with a plan through this kind of leadership circle that will be reflective of the original intentions and also the future, and where Kilauea is headed.

We have had our official meetings. We have done our nominations for the Executive Board. Those were approved on our last meeting, and we will continue to have our regular meetings. I think we have set every two (2) months at this point, to have an official Board of Directors meeting during this kind of period of growth and acceleration of the project.

*(Council Chair Furfaro was noted as present.)*

Mr. Kealoha: All of the information is in the attached documents as part of the presentation. If you do have any questions, I am always available, even beyond today's meeting, to dialogue with anybody at any time about some of those details.

Mr. Costa: Then moving onto the actual plan itself, this is a slide that shows the original plan that working with Kimura International, Inc., back in 2008. This original plan was put together based on the feedback of community meetings that were held back in 2007-2008. This plan utilized the entire seventy-five (75) acres. Some of the points that was done initially, at one (1) time there is a swale area which is in the south-eastern corner that initially we were going to build a retention area or water reservoir, actually. That was discarded because of some of the endangered bird species by creating actually a water habitat, we would encourage some of the birds to come and flock here. Two, with the National Dam Safety Act, we do not want to have to worry about those concerns. Basically, we are going to utilize that land for farming as well. Some of the other components like the Sunshine

Market, like the community gardens, incubator farms, and an energy farm, basically, to put up a photovoltaic array so that it can help offset the energy cost for irrigation pumps. Maybe in the future, as part of the Sunshine Market, have a building where produce from the agricultural center, from the plots, can be refrigerated.

I put a comparison together to show the original plan acreage and the revised plan acreage. Again, the organization pretty much utilized the initial plan. Some of the more notable changes and some of the acreage would differ just a little, but I averaged it out so that it comes out to seventy-five (75) acres. We looked at conventional farm lots and organic farm lots. The original plan showed six (6) lots for conventional, four (4) lots for organic. We are evening that out and increasing the lots size to five (5) acres and five (5) lots each for both types of farming. The orchard lot, which is in that swale area that I had mentioned, will remain. At one time, it was referred to as the "banana patch" and that may be utilized for banana again. Right now at last count, there is about twenty (20) something abandoned cars that have been there for a number of years. In Phase II is when I had proposed to have those cars removed so that piece of land can be utilized.

*(Councilmember Kagawa was noted as present.)*

Mr. Costa: Incubator lots. In the original plan we had four (4) one (1) acre lots. We are looking at creating more incubator lots of smaller sizes, from a quarter (0.25) acre to a half (0.50) acre size. Then, the community gardens, again, keeping the same number of community garden plots with about a half (0.50) acre less. Overall, there will be more farming lots or more acreage for farming, sixty-one (61) acres compared to fifty-five (55) from the original plan. A lot of that is made up in less interior roads and parking. Also, the original plan called for drilling three (3) four hundred (400) foot wells and a one hundred thousand (100,000) gallon storage tank. Right now, we are looking at other means of water. The initial means, right now of this property is approved for seven (7) five-eighths (5/8) inches meters which we plan to install to do some of the initial farming where the community gardens and the incubator lots are going to be, but the long range plan is to look at alternative water sources; one being a non-potable source that may come from the Kilauea Stone Dam and then the other one a possibility of utilizing a catchment system on the individual lots. We are going to be exploring those as well. Then of course, I mentioned the energy farm. That is still a major component and I mentioned that drainage retention area which we are not going forward with.

Here is a plan that the group came up with. What you see there, and I know the print is very small, but you can see the comparison. This just reflects the ten (10) acres in the south-western corner, which is at the intersection of Kilauea Road and Quarry Road. Right now, that is where the first site clearing will be done of these ten (10) acres initially for the community gardens, the incubator farms, the entry to the property, and some parking area for the Sunshine Market. Right now, as Keone has mentioned, Ben Ferris is a Kilauea farmer. He is also our volunteer coordinator at the Kilauea Sunshine Market, which is held every Thursday in the parking lot of the neighborhood center. That area is not only congested, but it is very dangerous with a lot of vehicles moving back and forth with adults and children as well moving about. The idea is to relocate the Sunshine Market from the Kilauea Neighborhood Center to this area.

In Phase I, the plan that I just mentioned, this is a breakdown of installing the water meters, the Sunshine Market area which right now is about three point two five (3.25) acres, the community gardens is about an acre and a half (1.50) with two hundred fifty (250) plots, and then the incubator farm lots will cover a little over five (5) acres.

For the setup, which is ongoing right now, these are some of the costs being incurred. The insurance, government documents, and the strategic plan, the group – and maybe Keone can speak to this a little bit more. The group has gotten a grant-in-aid from the State of Hawai'i and these first three (3) items will be paid through that grant. As I mentioned, the water meters comes under the County grant of one hundred thousand dollars (\$100,000), and then their Executive Director and part-time Secretary would come under their grant as well.

Councilmember Yukimura: What grant?

Mr. Costa: I am sorry.

Councilmember Yukimura: County grant?

Mr. Costa: No, the grant-in-aid.

Councilmember Yukimura: The State grant?

Mr. Costa: Right. Then, in Phase I, we will do a survey of the agricultural park or agricultural center boundaries, the site clearing, and then the Kīlauea Road berm. In the original plan, it called for creating wind breaks or berms and the original plan called for berm that were almost twenty (20) feet wide. We are looking at reducing the width of the berms and utilizing a lot of the actual trees and green waste that is going to be cleared. Instead of disposing of that, that will be utilized in the berm itself to create an organic berm. I guess I can have Keone speak to that as well. Basically, utilizing what is on the property to create these windbreaks and berms. Then, the office trailer purchase and the utility hook-up, again, that will be covered in their funding sources either through the State grant or donations or their fundraising efforts. Fencing. On Phase I, the fencing is thirteen thousand four hundred dollars (\$13,400). Part of this berm creating the berm of forty-eight thousand dollars (\$48,000) and the surveying will be covered under the remaining portion of the County grant of one hundred thousand dollars (\$100,000). The other portion will be used through the organization's fundraising efforts or paid for through the fundraising efforts. This is more of a narrative of what I just mentioned.

Phase II, will be the, as I mentioned, clearing the abandoned cars from the swale area, and installing an ingress/egress from Kahili Road. The ingress/egress from Kahili Road would be more of a service road for the farmers. Then site clearing for the rest of the sixty-five (65) acres, and then installing the remaining interior roads and infrastructure including the water lines, irrigation system, and wind breaks.

*(Councilmember Bynum was noted as not present.)*

Mr. Costa: Then also, looking at a compost yard. Actually, I had trailer attachments on the previous slide. Actually, it should be part of this cost in Phase II. Right now, with the exception of the abandoned car removal, most of this cost will be through fundraising efforts and grants from the organization.

Then the last phase, again, is looking at non-potable irrigation system working with Mr. Bill Porter who has the Kīlauea Mini Golf. He actually has a system that he had to put into his project there at the mini golf and he has offered for us to utilize that water system. The challenge would be getting that water from the mini golf over to the agricultural park. We are looking at how that can be done and we are also in discussions with property owners, mainly Bill Hay, on how we can do a transmission line getting that water from the mini golf to the agricultural park. Then, the other

two (2) items is a maintenance building for equipment and supplies, and then the energy farm as I mentioned previously. Again, those would be paid through fundraising efforts by the organization either through grants, State grants, Federal grants, fundraising efforts, and donations.

Maybe, Keone, you could speak to the windbreak process and maybe some of the other items that we talked about.

Mr. Kealoha: I mean, if there is any particular questions, I could answer them more specifically. I think part of what we are looking at here is really moving more into a building on what the planning process that was already done through the County, which is more of a top level master plan and really looking at how do we phase the development, what are our funding sources, what is the approach? This is what we know right now. Hopefully, with the grant-in-aid that we were awarded through the legislature this last session, that ninety thousand dollars (\$90,000) will go towards having more interaction with the community, looking at some subject matter experts, bring in their expertise into play, and really going to the next level of what we need to do in order to create a more detailed implementation plan.

Mr. Costa: If I could add, on the first phase I had mentioned creating the community gardens, the incubator farm lots or small incubator farm lots, and then having the area cleared for the relocation of the Sunshine Market, part of that is to look at a selection process on farmers, getting them on the incubation lots, helping them with some training, and then during that time as Phases II and III where we do the site clearing of the major portion of the agricultural lots, hopefully during that year to two (2) years while that is being develop, those farmers that go through the incubator lots will have proven themselves and will be part of the, I guess, selection process for the larger lots that would be coming two (2) years down that road. That is the end of our presentation. We are open to any questions. Thank you.

Council Chair Furfaro: George, before I ask for questions, Phase II and III are just kind of in a scope mode, but you are prepared to move forward on Phase I?

Mr. Costa: That is correct.

Council Chair Furfaro: I just want to make sure we are clear that adjustments can be made to Phase II and III.

Mr. Costa: Right.

Council Chair Furfaro: But our focus should be on firming up Phase I?

Mr. Costa: Phase I, that is correct.

Council Chair Furfaro: Question members? Mr. Kagawa.

Councilmember Kagawa: Thank you. George, since we had the last meeting, I think, when we gave the green light to go ahead, how has progress been as a group? Has it been on schedule? Has it been maybe slower than you had anticipated? What is the progress since the last meeting was maybe four (4) months ago.

Mr. Costa: Right. Well, I know from the group standpoint or from my standpoint, I know they have been working diligently, especially with the governance, the documents, and forming the organization. From the Office of Economic Development, I have been working with the Water Department to firm up how many meters we really have on that parcel.

*(Councilmember Hooser was noted as not present.)*

Mr. Costa: Working with Kirk Saiki. We are ready to move forward with the installation of the water meters from our standpoint. Then now with their governing documents being submitted, we feel we are prepared to at least get on, do the initial clearing of the first ten (10) acres, and then with the water meters installed we will have some water for their portable office. Then, also fencing was the other part that maybe I did not mention; getting the area fenced. If anybody has been down to that property, what I found is besides those abandoned cars that there is a lot of growth. It is going to take a lot more work to get those cars out, but what I have noticed just within the last year, that lower portion is being used as a dump site for green waste. There is a large, large pile. One of the first things we want to do is put up fencing around the perimeter to prevent more dumping of green waste.

Councilmember Kagawa: As your group meets, you have projections, I guess, that you set. When can, I guess, the community see the first plantings or the starting of actual farming?

Mr. Kealoha: Right. That is kind of what Phase I is talking about. Over the last four (4) months or so, we took a lead from some of the questions from the Council and what is in the agreement. We formed the organizing entity and submitted all of that documentation to the State, it was approved, and we are moving forward with the Federal recognition as a non-profit for that organization. We set our Executive Officers, our meeting schedules, and things like that. As far as the governance piece, I feel like we are definitely on track in moving ahead on the timeline. As far as on the ground, what we did is we looked at a couple of factors. We are limited right now to the amount of water access we have. Really, we cannot open that whole site until we resolve the water issue.

Councilmember Kagawa: I guess...

Mr. Kealoha: The whole site. The whole seventy-five (75) acres, but what we can do with the amount of water meters that are currently granted, if we put those water meters in, we can open Phase I, which is about ten (10) acres. What that section is, is some of the most highly visible areas of that park because anyone traveling on Kilauea Road will see the activity. It opens up the activities that are most collaborative with the community. It would move the farmers market, it would open the community garden plots, two hundred fifty (250) plots, and it would start some of the smaller incubation plots to start preparing the road for who could actually move into these bigger lots when they are ready down the road. We are talking about the highest level of collaboration that we can get with the community, the highest level of visibility because it is on the road and we will start having more interaction which will raise the interest in the community and, I think, participation from community members, business, and funding sources.

Councilmember Kagawa: That is a great answer, great strategy, I think, to get it started and get the community to see it and get excited even if we have to start in a small phase. I have not heard that date yet.



*(Councilmember Hooser was noted as present.)*

Councilmember Kagawa: If we are in a perfect world, is it a year from now, two (2) years from now?

Mr. Costa: Six (6) months.

Councilmember Kagawa: Six (6) months?

Mr. Costa: Within the next six (6) months to start the grading, the clearing, and the water meters. The water meters is the key, to get those installed.

Councilmember Kagawa: Right. Terrific. Thank you, folks. Thank you, Chair.

Council Chair Furfaro: Any other questions on this update? None?  
Go right ahead JoAnn.

Councilmember Yukimura: I do not see a revenues and expenditure plan. I mean, when you put the water meters in, is there going to be a monthly cost and if you put your office there, there will be electricity costs as well? How are you paying for these monthly expenditures?

Mr. Kealoha: There is a line item for utilities in the budget that was presented. It is in one of those pages there. We listed it at five thousand dollars (\$5,000).

Councilmember Yukimura: Is it here in the PowerPoint?

Mr. Kealoha: It is. It is in...I can give you the page number.

Council Chair Furfaro: Do you have a page number?

Mr. Costa: Actually...

Councilmember Yukimura: You do not have page numbers.

Mr. Costa: No, it is not.

Mr. Kealoha: There is a line item for utilities.

Mr. Costa: Oh, okay.

Councilmember Yukimura: Would you want to point that out?

Mr. Kealoha: The line item would be on budget Phase I, office trailer purchase, and there is a line item for...

Mr. Costa: Oh, right.

Mr. Kealoha: ...utilities as well in there.

Councilmember Yukimura: Where is that money going to come from?

Mr. Kealoha: That money is part of the...we have received some private grants in addition to the State grant-in-aid (GIA) grants. The purchase of the office trailer is part of the Capital Improvement Project (CIP) grant that was given to us by the State. Then the office trailer utilities are already covered. We have received two (2) donations, one for four thousand seven hundred dollars (\$4,700) and the other for five hundred dollars (\$500), and that has been earmarked for trailer support.

Councilmember Yukimura: This is a yearly figure, five thousand dollars (\$5,000)?

Mr. Kealoha: It is for...

Councilmember Yukimura: For utilities.

Mr. Kealoha: For right now, I believe that this is set. The budgets are set on an annual basis starting January, ending December.

Councilmember Yukimura: Okay, so it is five thousand dollars (\$5,000) for a year?

Mr. Kealoha: Yes, and I think that although our fiscal year that is set is January to December, I think that when the trailer is put in place, that is probably when the clock would start on that funding being dispersed against the utilities.

Councilmember Yukimura: I would like to request that at your next update, you give us a more conventional budget that shows what sources are going to be used for what purposes.

Mr. Kealoha: Okay.

Councilmember Yukimura: A revenues/expenses kind of plan.

Mr. Kealoha: Alright.

Council Chair Furfaro: May I add to that, JoAnn?

Councilmember Yukimura: Sure.

Council Chair Furfaro: Also, Keone, perhaps you can give us a better idea of your Director, how many hours they are working, and is the number that you gave us, is that inclusive of Payroll, Taxes, and Employee Benefits (PT&E) or what exact benefits and tax fringes come with that?

*(Councilmember Hooser was noted as not present.)*

Mr. Kealoha: Okay. So, just providing a more comprehensive budget?

Council Chair Furfaro: Yes, just more detail.

Mr. Kealoha: As you normally would with a budget with all of the details?

Council Chair Furfaro: Okay.

Mr. Kealoha: No problem.

Council Chair Furfaro: JoAnn, I give you the floor back.

Councilmember Yukimura: Thank you.

Council Chair Furfaro: Thank you for letting me ask that question.

Councilmember Yukimura: What is your overall three (3) year budget, where are you getting your moneys from, how much is coming from government, and how much is going to be raised from the outside?

Mr. Kealoha: I think that is part of our strategic planning process, which we do have funding for through the GIA grant, ninety thousand dollars (\$90,000). I think a lot of the more detailed questions, we need to go through that process. Right now, we are essentially working on volunteer time. We have received some very small support for the time that we have been putting in, but as an example, Yoshito's time has predominately all been volunteer time. We have been forced on if we can secure that first year of support, a lot of the questions will come through this deeper level strategic planning process where we are talking about phasing development; costs of Phase I, Phase II, and Phase III; funding sources; human resource needs; and things like that; funding partners whether they would be government, private or foundation.

Councilmember Yukimura: Are you talking about the strategic plan as the operations plan that was part of, I guess, the County's requirement? It is on slide...if you count the cover. Please, next time, can you number your pages? Fourth page. "Stewards will," what is part of the Stewardship Agreement, "complete an operational master plan." Is that your strategic plan?

Mr. Kealoha: That is correct.

Councilmember Yukimura: Is that the same thing?

Mr. Kealoha: Yes, it is.

*(Councilmember Hooser was noted as present.)*

Councilmember Yukimura: When is that plan to be completed?

Mr. Kealoha: It is hinging right now on the disbursement of the funding from the State of Hawai'i. As soon as we get the funding, then we can start a timeline as far as the plan. We are looking at anywhere from eight (8) to twelve (12) months to have the plan completed. Again, I think that depends on when the money is disbursed.

Councilmember Yukimura: Well, you can use the money disbursement as Day 1. So, you are talking about eight (8) to twelve (12) months after disbursement? Is that right?

Mr. Kealoha: That is a projected timeline based on what we know right now.

Councilmember Yukimura: Well, I mean, George, as the administrator of the one hundred thousand dollars (\$100,000) in County moneys, I am assuming that

you will not issue it without a timeline of deliverables and measurable, and what are those?

Mr. Costa: That is correct. It has not been issued yet. We actually have a grant application which outlines many of those points, but until we get the finalization of what actually is going to be done, the moneys will not be issued. That is why we are working diligently to try and meet at least with the water meters that we can install, I mean, for the infrastructure. At least from the County standpoint, we will have installed that.

Councilmember Yukimura: You are going to install the water and is there a monthly cost for that?

Mr. Costa: I beg your pardon.

Councilmember Yukimura: There is a monthly cost for those meters?

Mr. Costa: We have the initial cost of about thirty-five thousand dollars (\$35,000) for the installation of the meters.

Councilmember Yukimura: Of two (2) meters.

Mr. Costa: Then, the monthly cost would be borne by the organization.

Councilmember Yukimura: There is already five (5) meters there?

Mr. Costa: No, there are no meters there.

Councilmember Yukimura: You just have an...

Mr. Costa: It is approved for...

Councilmember Yukimura: ...entitlement of five (5) meters?

Mr. Costa: Yes.

Councilmember Yukimura: And you are going to purchase another two (2) meters at the cost of thirty-five thousand dollars (\$35,000)?

Mr. Costa: No. Actually, we have documentation that shows that there is approval of seven (7) meters, five (5) for Lot 26A and two (2) for Lot 26B. So, seven (7) meters are approved for that.

Councilmember Yukimura: But I thought Yoshito told me yesterday that they are going to cost thirty-five thousand dollars (\$35,000)?

Mr. Costa: Thirty-five thousand dollars (\$35,000), right.

Councilmember Yukimura: So, you are going to pay for those meters and then when do the farmers start?

Mr. Costa: Well, that will be dependent on when we can clear the land and designate those incubator lots.

Councilmember Yukimura: You are only going to have incubator lots –I mean, my eyebrows went up when I saw quarter (¼) acre incubator lots. That is a residential lot size. I am just not sure what the plan is.

Mr. Costa: Okay. According to Ben Ferris who is the farmer, it is his recommendation that they have smaller incubator lots for individuals that are interested in farming, that they can prove themselves on the smaller lots before being afforded or the opportunity on the larger lots. Now, again, this is a total of seventy-five (75) acres and I had mentioned on the breakdown what we are really looking at are ten (10) five (5) acre lots total. With regards to as far as how much is available lot farmers, it is only ten (10) conventional and ten (10) organic lots right now. There will be opportunities for those interested to start on a smaller scale and prove that they can farm before they are afforded opportunities to have a lease on the larger lots.

Councilmember Yukimura: Yes, but what if you cannot get water for the larger lots and you have these farmers who need to move to a larger lot?

Mr. Costa: Well, we will be working diligently to address the water situation. That is why I mentioned we looked at other alternatives like catchment systems and drip irrigation systems.

Mr. Kealoha: I think again, some of the questions are being asked, I think, would be better answered when we spend more time looking at those through the planning process. I think the County did a good job of doing an overall mater plan, but we are talking about specifics about what are the alternatives for water.

*(Councilmember Chock was noted as not present.)*

Mr. Kealoha: I think that those would be better answered through that kind of strategic planning process. The approach that we would take with Phase I is to develop a portion of the land that is 1) highly visible to the community to inspire more activity, support, and participation, 2) works within the current allowable infrastructure, electric and the water meters that are allowed will be able to supply that initial ten (10) acres with the adequate water, and then 3) just to see that things can happen. That when we come together, we work together, the Council, the Departments, and the community, that we can actually see some of the things move forward and give us some hope for the future. I definitely appreciate all of the questions because they are questions that needs to be answered. Some of them, I think, are beyond the scope of what we know without spending more detailed time through this planning process. Fortunately, through our collaboration and working together, we hope to be able to answer those questions.

Council Chair Furfaro: I have a question for Councilmember Yukimura. After your next question, would you yield the floor?

Councilmember Yukimura: Yes, I will yield the floor after my next question.

Council Chair Furfaro: Thank you.

Councilmember Yukimura: How much did we pay Kimura International, Inc.?

Mr. Costa: All total spent, about one hundred fifty thousand dollars (\$150,000). One hundred eighty thousand dollars (\$180,000) was for the environmental assessment.

Councilmember Yukimura: And one hundred fifty thousand dollars (\$150,000) was for?

Mr. Costa: For Kimura International, Inc.

Councilmember Yukimura: Planning?

Mr. Costa: Yes, the planning.

Councilmember Yukimura: We spent three hundred thirty thousand dollars (\$330,000) plus ninety thousand dollars (\$90,000) proposed for the strategic plan. We will have spent four hundred twenty thousand dollars (\$420,000) on this agricultural center now?

*(Councilmember Chock was noted as present.)*

Councilmember Yukimura: When will we start getting results?

Mr. Costa: The ninety thousand dollars (\$90,000)...

Mr. Kealoha: Is from the State, not from the County.

Councilmember Yukimura: I know.

Mr. Costa: Okay.

Councilmember Yukimura: It is, but it is all public taxpayer money.

Mr. Costa: Okay.

Councilmember Yukimura: Of course there is the other one hundred thousand dollars (\$100,000) from the County, which is five hundred twenty thousand dollars (\$520,000).

Mr. Costa: Right.

Councilmember Yukimura: When are we getting the results? I am not even clear what the results are going to be.

Mr. Kealoha: I think there is a number of results that were contained as bullet points within this presentation. If you look at Phase I, if we are able to produce Phase I, we are talking about two hundred fifty (250) plots for the community, a farmers market that will be moved to alleviate liability and congestion in the town of Kilauea, and we are talking about incubator plots which will help to prepare some of our folks in the community for scaling up agricultural operations. I mean, I really feel like that Phase I really is answering your question.

Councilmember Yukimura: I have to follow-up, if I may.

Council Chair Furfaro: You may.

Councilmember Yukimura: How are you choosing the farmers for this incubator plot? I mean, I do not see this continuity of a plan to actually get to farming and produce.

Mr. Costa: As far as the incubator lots...

Councilmember Yukimura: I am assuming that is the goal, but I am not clear what the goal is.

Mr. Costa: There will also be a selection committee and a process where farmers can apply for these incubator lots, and then eventually for the large scale lots. They would need to provide some background experience of farming, unless they are interested in just starting from scratch. Primarily, we are looking at those that have some experience with farming that can scale up to the larger lots.

Councilmember Yukimura: Are you going to require business plans?

Mr. Costa: I beg your pardon.

Councilmember Yukimura: Are you going to require business plans?

Mr. Costa: We are looking at that as the model. I have worked with my counterpart with the Maui Office of Economic Development. They have an agricultural park which is much larger than what we have. They have a similar selection process made up of business members of the community with agricultural experience, and what they do is require three (3) years of financials or income tax returns that shows farming as well as a business plan.

Councilmember Yukimura: What is the minimum size of those lots, George?

Mr. Costa: The minimum size is ten (10) acres, on those lots.

Councilmember Yukimura: Thank you.

Council Chair Furfaro: George, let me summarize this before I give the floor to Mr. Rapozo. We are looking for you to summarize these desired outcomes by the next visit. Then, we also want to know about how you are tying water priorities to the various lots so that we do not tie our hands and we end up having people that want to lease bigger pieces, but do not necessarily have the water assignment to it. We want to have the priorities on that. We also want to find out how you are qualifying these leases and then also, on the financial piece, we want to have more detail with the PT&E, payroll, taxes, and the detail. I will give the floor to Mr. Rapozo.

Councilmember Rapozo: Thank you, Mr. Chair. I do not know how much more in-depth we are going to get into this. If there is going to be a lot more, then I would suggest maybe we send it to a Committee. If we are close, then I will proceed and maybe we can wrap this up real quick. I guess I need to say that I am very pleased with the presentation, number one. A lot of the moneys that were discussed by Councilmember Yukimura occurred way before your organization got involved. Since your organization got involved with the Office of Economic Development, George, I am very happy first of all, about the revisions in the plan. I mean, I think that is why we basically turned it over to the organization, get it out of the hands of the County so we can stay out of it because I am assuming, as I look at

your Board of Directors, you have discussed this with the farmers, the real people that are going to be in the dirt, and that they believe that the incubator lots will work. I believe they will work because the difference between a residential lot and an agricultural lot is the agricultural lot will not have a home on it. So, you have a quarter (¼) acre to try your crop. I think that is great. I think, number one, it gives someone the opportunity to succeed rather than forcing them to a larger lot which is a guarantee failure. I appreciate the revision because these are revisions not made by the Office of Economic Development or the Kaua'i County Council. It is made by farmers and I really appreciate that. I am not going to ask you when the crops are going to be in the ground, but at what point, because I understand this is still moving. You folks are still discussing and still trying to figure out what will work. At what point will you think you will be able to present a more comprehensive plan as Councilmember Yukimura is asking for? How much time do you think you would need to present something, a fair time that you would need to put it all together?

Mr. Kealoha: Well, from my perspective, we are a community pushing it ahead. We do not have an annual budget of tens and millions of dollars that we could allocate some of that funding to. So, we do look for partners. I think the County, it is in the community's hands to a certain extent, but we are still working in collaboration with the County and I think through that partnership we are able to leverage and make those dollars work more in the community. I mean, as it was pointed out, some of the planning that was done maybe one hundred fifty thousand dollars (\$150,000) to Kimura International, Inc. for just a general master plan where we fell ninety thousand dollars (\$90,000) is adequate to put together a highly detailed implementation plan from the community's standpoint.

*(Councilmember Bynum was noted as present.)*

Mr. Kealoha: The cost savings are already being seen, at least on paper. As far as when that plan is completed, I think it is going to give us those details. In the interim, there are things that we can do to start preparing the space for actual agriculture to begin and some of those are access to water. Right now, there is no water on the property other than rainfall. Yoshito has been to the Water Department on several occasions and so has George. Through that process, we found out that we had more meters than we originally thought because we tracked down all of the deeds and all of the documentation, and we also found out that some of those, we do not have to pay for as much as we thought. I think we originally had a line item of sixty thousand dollars (\$60,000) or sixty-five thousand dollars (\$65,000), which has been cut in half just through doing research, talking to the right people, and that is the community to a large part, pushing that forward. As far as having things in the ground, I think, we need to get the water, we need to open the land, have some sense of site control which the office trailer and the fencing will help provide, and then we can start putting things in the ground.

Councilmember Rapozo: The timeline, just to get to that point, six (6) months?

Mr. Kealoha: Six (6) months for some of the clearing, getting the site prepared, and getting the water meters in. At the same time, concurrently, hopefully we get that funding from the GIA disbursed soon. That planning process can start. We can start holding meetings at the neighborhood center or in the community and when that office trailer or the site starts to become more accessible, we can start having meetings on the site. Hopefully, these things are not linear and dependent upon each other happening. We are trying to look at what we can do in conjunction with each other so that we can make things happen more quickly. Again, I think the community is more than hungry to see some activity and



once that ground gets broken and they see it, they are driving by and they see things moving, a lot more people are going to shake off the old feeling that this is never going to happen, and they are going to come to the table and help make this happen.

Councilmember Rapozo: Thank you. I feel it is going to happen. I believe this is going to be in perpetuity. It is something like the Chair said earlier today, let us do it right the first time.

Mr. Kealoha: Right.

Councilmember Rapozo: I think you are on track. I am very pleased. The community gardens, to me, will just be a great thing. Two hundred fifty (250) of those that can allow regular people to go start their little crops, and I think that is going to be exciting. I look forward to that all coming together. Thank you.

Mr. Kealoha: Thank you.

Council Chair Furfaro: On that note, we are going to have to take a caption break. When we come back, we are already going to be at 11:45 a.m. Again, George, just real quick. When would you anticipate your next update to us? March?

Mr. Costa: At least March, yes.

Council Chair Furfaro: At least March.

Mr. Costa: Right.

Council Chair Furfaro: Okay. We are going to take a ten (10) minute caption break here.

There being no objections, the meeting recessed at 11:38 a.m.

The meeting reconvened at 11:53 a.m., and proceeded as follows:

*(Councilmember Rapozo was noted as not present.)*

There being no objections, the rules were suspended.

Council Chair Furfaro: We are back. Mr. Rapozo has ended his questions. Any further questions at this time on this update? If not, George, I am going to take public testimony.

Mr. Costa: Okay.

Council Chair Furfaro: We are looking for you to come back sometime in March.

Mr. Costa: Yes.

Council Chair Furfaro: Alright. Thank you.

Mr. Costa: Thank you.

Council Chair Furfaro: Is there anyone from the audience that would like to give public testimony?

MAKA'ALA KA'AMOANA: Aloha Chair and Council. Maka'ala Ka'amoana. On behalf of my hat as Hui Ho'omalua I ka 'Aina, I want to *mahalo* them for giving this presentation and informing the community of the plans. I certainly support and appreciate collaborative effort. This is a good example of many partners. I did have a chance to speak with George about the wastewater for this project, which I did not hear any mention of. Because this facility, at least to start, will be right on Kilauea Road and we know the experience that places like (inaudible) have now. Visitors and residents alike are often looking for a restroom. I think they should plan on having more than porta-potties. It does not have to be an extraordinarily expensive one, but given the water consumption and the number of people anticipated per day, they may be talking about a large capacity septic system, but they should understand that needs to be in their budget. George understands, but because it was not part of the presentation, I did just want to bring it up and actually thank Lorrie Hoe for saying to me, "What about the wastewater?"

As a resident of Kalihiwai and a farmer, I am certainly appreciative of the opportunity for these incubator lots. I think they are absolutely on the right track starting out with smaller things. I think all of us had big grand ideas and plans about what we thought we could produce and grow, and it is never as easy as you think it is going to be. I like the idea of it being visible to the community and encouraging the next generation and our young people to take advantage of this, what seems to me very expensive opportunity, but I believe that the investment will play out in the future. *Mahalo nui loa* for the County support and role as a partner with the community. *Mahalo*.

Council Chair Furfaro: Maka'ala, thank you for bringing up the question about the septic system because recently, the State has changed their density rules on that, but it certainly something we would like to hear from at the next report.

Ms. Ka'amoana: *Mahalo*. The large capacity septic system rules comes from the Environmental Protection Agency and the guidance is one thousand (1,000) gallons of water out a day or one hundred (100) people using it. The Federal guideline still stands for large capacity. It does double the cost. It is a big system.

Council Chair Furfaro: Yes, they recently went roughly from a forty-nine (49) residential units down to nineteen (19), and I think that is based on a household of five (5) with one thousand (1,000) gallons.

Ms. Ka'amoana: That is what you get.

Council Chair Furfaro: Yes.

Ms. Ka'amoana: That is right. There are some systems that would qualify. This might qualify. I would encourage the County as well as the community partners to explore the potential for funding partnerships as well to pay for this wastewater. I would be happy to talk with that organization about those potentials that are just coming up, which will testify to later on today. *Mahalo*.

Council Chair Furfaro: Thank you. Next speaker. Come right up.

ANNE PUNOHU: Aloha. My name is Anne Punohu. I would just like to say that I currently am—I guess that is what I am now, an incubator farmer. I never thought about that before. I currently farm in a similar project which is much further along than the Kilauea project. However, we are doing things a little

different out there. We are just kind of like Wild West out there. We are just going for it. Just cleared land and it has taken me four (4) months to get where there is enough machinery available and sometimes the machines breakdown, we have brought water lines down, and it has been frustrating. I finally planted last month, and I have a quarter ( $\frac{1}{4}$ ) of an acre currently. My plan said, "Yes, I wanted twenty (20) acres. When I got it all, and then I went, "ouch." I am currently working hard on a quarter ( $\frac{1}{4}$ ) of an acre and I will tell you that I hoed an entire half of that quarter ( $\frac{1}{4}$ ) of an acre by myself last week. The plan that I heard today is fabulous. I think that if it can be pulled off the way it is being stated, I think it is great. I think that the County should support it. Of course I am being really selfish. I would like to have also money for—well, but you know. I think that Kealoha did really great job and all of the people that are on their Board, that is my old boss up there. Those people are knowledgeable they know what they are doing, and if there is any group of people that could pull it off, it is these people. I just want to say that an incubating farming and especially for people like myself. I am not eighteen (18) anymore. I cannot hoe two (2) acres by myself, but it is so good for people to be able to get back to the land. You could produce a lot out of a small plot. To move onto a bigger plot requires money. This has been my problem. I mean, my problem has been having money for seed and not having money for a riding tractor mower or something simple that could help me keep the weeds down because we are going completely organically. I think that it is important that if you have a project like this, everybody has the opportunity to have the things that they need, water and machinery because you have to clear land a lot when you are organically farming because you cannot use anything to take the weeds down but your own hands. I would like to say, continue to support the project. I know that if the project is able to move forward, the simplest thing that they need, which is water and clearing the land. The people can get on the land and it produce and it would be good for the community. I think where I am at, we are doing it already. I think that if you look at what we are doing where I am at, it is doable and I think that if you continue to support the project, it will come out to full fruition and it will do what it said it was going to do. *Mahalo*.

Council Chair Furfaro: Thank you very much. Anyone else wishes to testify?

There being on further testimony, the meeting was called back to order and proceeded as follows:

Council Chair Furfaro: I do think I already have a motion to receive C 2014-292. Any further discussion? If not, we are going to see you sometime in March. Mr. Kagawa.

Councilmember Kagawa: Thank you. Just real quick. I would just like to thank the group, Keone, and the whole group that has been volunteering their time and efforts, and George for coordinating. It has been over thirty (30) years or so since it has been talked about. It is a first ever for Kaua'i that is six (6) months away possibly, from breaking ground. I know everything is never perfect, but I would say that this group has done a tremendous job. I will support it one hundred percent (100%) to get it working. I think this is where a lot of the community in the past two (2) years talk about food sustainability. This is taking us to where we can to go. I have an uncle. Just short a story. Maybe half the size of this Council room, my uncle Toki Koga, and he raises all of the *luau* leaf that the Kaua'i Pupu Factory in Hanapēpē produces, and they make over one hundred (100) *laulaus* every day. Just to show you from a small section, what can be done. I think we can to a lot and we can go big. I still see at Times Supermarket and what have you, bags of *luau* leaf from O'ahu and what have you. If we can have those grown here, it would only benefit

us. All for it. Chair, thank you for putting it on and let us hope for the best as we continue to progress. Thank you.

Council Chair Furfaro: Thank you. Anyone else? If not, the motion is to receive. JoAnn, you have the floor.

Councilmember Yukimura: Yes, I want to thank George and Keone for the report. For me, it raised a lot of questions and I hope that my questions will be answered. I was very, very encouraged when we heard that Keone had visited some real working co-operatives (co-ops) around the Country and met people who have some expertise and experience. I am looking forward to seeing a plan that reflects that kind of thinking and planning that goes into developing working farms and co-operatives. I hope the ninety thousand dollars (\$90,000) will not be used to bring in experts. I mean, I think we need to have the people who are doing the work put together a plan. I think that sending those plans out and getting feedback and so forth, will be a good thing to do. I hope to see from the Office of Economic Development, some very clear deliverables and measurables which in exchange for the one hundred thousand dollars (\$100,000) and the land. I think our accountability as government in terms of the expenditure of public moneys requires that. I hope that will be clear so that everybody is clear. I have deep hope for something that will move us forward in terms of increased food sustainability.

Council Chair Furfaro: Thank you. If there is –Mr. Chock, Vice Chair.

Councilmember Chock: Just one (1) comment. Thank you again, for the update. I think that I will have a really big sigh of relief once I can get clear on the *wai* and where this water is going to come from. If there is a lot of or any effort between now and the next update, I would really love to see that occur because I think without that, we are really stuck. I appreciate the time and effort you folks have. I know that plan is forthcoming and the opportunity, hopefully will continue. *Mahalo*.

Council Chair Furfaro: I guess it is my turn. Same question with me, George. Very concerned about the forecast on the operating utility cost because I also heard that a potential water source was also the Stone Dam, but obviously, the elevations in Kilauea pose a challenge and that might have to be water that gets pumped. We have not seen that part because I think from the dam to the actual field, the elevation only changes by like one and a half (1½) feet at the most. Depending on the gravity use to get water to the fields, you may have to revise the potential of pumping and so forth. Also, I would encourage you to continue to look at the Kilauea Mini Golf as a water source too since they are willing to participate even though it may be more CIP money. Thank you very much, gentlemen, for your presentation.

The motion to receive C 2014-292 for the record, was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Furfaro: Now, I would like to go back to, I think it is C 2014-290 with Mona, if we can.

Ms. Fountain-Tanigawa: On page 2, C 2014-290.

Council Chair Furfaro: If I recall, we had First Deputy County Attorney Mauna Kea available to us and he made reference to coming over with Mona. Are you both going to come up now? Just Mona? Okay.

There being no objections, the rules were suspended.

Council Chair Furfaro:               Mona, are you aware of the question that I posed when they made reference to you?

*(Councilmember Kagawa was noted as not present.)*

MONA W. CLARK, Deputy County Clerk:               I would assume it would pertain to my authority to sign off for Al. Yes, I spoke with Al about it specifically and he authorized me to sign for the release of the July 29<sup>th</sup> opinion on his behalf.

Council Chair Furfaro:               Okay. That clarifies that question for everyone?

Councilmember Yukimura:           I believe so.

Council Chair Furfaro:               Okay.

Councilmember Yukimura:           May I just clarify one (1) point?

Council Chair Furfaro:               JoAnn, you can have the floor, but that was the question we posed when we asked her to come down. You have the floor.

Councilmember Yukimura:           Thank you. Mona, thank you for being here. The County Attorney's Office has no objections to the release of this opinion, is that correct?

Ms. Clark:                               That is correct.

Councilmember Yukimura:           Okay. Thank you.

Council Chair Furfaro:               Thank you. Further questions? If not, Mona thank you very much.

Ms. Clark:                               Certainly.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro:               Now, on this communication, are we going to make reference to the Executive Session?

Ms. Fountain-Tanigawa:           No, we have had the Executive Session. We just need to take a vote. Five (5) votes to release.

Council Chair Furfaro:               I do not have all of the members for that vote. I am trying to buy some time here.

Councilmember Yukimura:           What do we need? How many?

Ms. Fountain-Tanigawa:           Five (5) votes.

Councilmember Yukimura:           Five (5) votes.

Council Chair Furfaro:               We need five (5) votes. I would just feel comfortable knowing that I have a full body in the house.

Councilmember Yukimura: Okay.

Council Chair Furfaro: If people want to register a “nay” vote, they have to at the table to say “nay.” If they want to go with the majority, then they have to be here. Does anybody want a personal privilege at this time?

*(Councilmember Kagawa was noted as present.)*

Councilmember Yukimura: Yes, Chair. If I may ask a question about process. Shoreline Setback, can we say with any certainty that it will be after lunch?

Council Chair Furfaro: I would say I would like to use the rest of this time to get through the Committee Reports and then I think it would be safe to say it is probably better to be about 2:15 p.m., JoAnn.

Councilmember Yukimura: Okay. Thank you. That is helpful.

Council Chair Furfaro: We have Executive Sessions too at 1:30 p.m.

Councilmember Yukimura: Thank you. Shoreline Setback...

Council Chair Furfaro: Does everybody hear me out there, that the Shoreline Setback will probably be closer to 2:15 p.m.? We have made an attempt to get everybody here. Do we have a motion on this release?

Councilmember Kagawa: Yes.

Councilmember Yukimura: We do? Oh, yes that you did.

Ms. Fountain-Tanigawa: Yes we do.

Council Chair Furfaro: That was Mr. Kagawa, I believe, right?

Councilmember Yukimura: Yes.

Council Chair Furfaro: Right?

Councilmember Yukimura: Yes.

Council Chair Furfaro: Since we have six (6) members, let us do a roll call vote.

The motion to approve C 2014-290 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7*,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: Thank you, Mr. Kagawa, for coming back since it was your motion. We are good on that Jade?

Ms. Fountain-Tanigawa: Yes. The next item is on page 3, Claims.

#### CLAIMS:

C 2014-293 Communication (10/24/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Holly Finley, on behalf of Hawaiian Telcom, for damages to their property, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2014-293 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Yukimura, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Furfaro: Next item, please.

C 2014-294 Communication (10/24/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Stacy Trinh, Payment Recovery Examiner of GEICO Insurance as subrogee for Lindsay Yuh, for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2014-294 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Yukimura, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Furfaro: Next item.

#### COMMITTEE REPORTS:

##### PLANNING COMMITTEE:

A report (No. CR-PL 2014-10) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

"Bill No. 2461, Draft 3 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (*Amendments to the Shoreline Setback Ordinance*),"

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Bynum, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Furfaro: Next, Jade.

##### HOUSING & TRANSPORTATION COMMITTEE:

A report (No. CR-HT 2014-03) submitted by the Housing & Transportation Committee, recommending that the following be Received for the Record:

“HT 2014-03 Communication (10/09/2014) from Committee Chair Yukimura, requesting the presence of the Director of Economic Development, to provide a briefing on the North Shore Shuttle Initiative, which is related to Mayor Carvalho’s Holo Holo 2020 Initiative,”

Councilmember Yukimura moved for approval of the report, seconded by Councilmember Hooser, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Furfaro:                      Next.

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE:

A report (No. CR-FED 2014-38) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the following be referred to the November 19, 2014 Council Meeting:

“Bill No. 2546, Draft 2 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Agronomics / Agricultural Use Definition / Reporting*),”

A report (No. CR-FED 2014-39) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2557, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Low Income Tax Credit*),”

A report (No. CR-FED 2014-40) submitted by the Planning Committee, recommending that the following be Received for the Record on second and final reading:

“Bill No. 2559, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Tax On Use*),”

A report (No. CR-FED 2014-41) submitted by the Planning Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2561 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Office of the County Attorney, Special Counsel Account - \$67,933*),”

Councilmember Kagawa moved for approval of the reports, seconded by Councilmember Chock, and unanimously carried (*Pursuant to Rule No. 5(b) of*



*the Rules of the Council of the County of Kauaʻi, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Council Chair Furfaro: Next, Jade.

#### COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2014-14) submitted by the Planning Committee, recommending that the following be Received for the Record:

“COW 2014-05 Communication (10/16/2014) from Council Chair Furfaro, requesting the presence of the County Engineer, to provide an update on the County of Kauaʻi’s office space needs,”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Chock, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Council Chair Furfaro: I guess we will go to Resolutions.

Ms. Fountain-Tanigawa: This brings us to page 5, Resolutions.

#### RESOLUTIONS:

Resolution No. 2014-49 – RESOLUTION PRESERVING THE CHARACTER OF HANAIEI BAY BY RESTRICTING USE OF LARGE VESSELS WITHIN THE BAY

Ms. Fountain-Tanigawa: Chair, we have three (3) registered speakers.

Council Chair Furfaro: Oh, we do? Okay. May I get a motion?

Councilmember Bynum moved for adoption of Resolution No. 2014-49, seconded by Councilmember Kagawa.

Council Chair Furfaro: We have a motion and a second. Let us call our speakers.

Ms. Fountain-Tanigawa: The first speaker is Carl Imparato followed by Barbara Robeson.

There being no objections, the rules were suspended to take public testimony.

Council Chair Furfaro: Good afternoon.

CARL IMPARATO: Aloha Councilmembers. My name is Carl Imparato and I would like to offer a little bit of background as to what has been happening in Hanalei. In July of 2012, the Karima, a one hundred sixty-two (162) foot long for rent luxury super yacht, and that is in length about the length of a thirteen (13) story building. That super yacht moored in Hanalei Bay for nearly two (2) weeks. During that time, it ignored a number of State and County rules, guidelines, and protocols. It loaded and unloaded at the Hanalei Pier with Division of Boating & Ocean Recreation’s (DOBOR) approval even though the Hawaiʻi

Administrative Rules (HAR) for Hanalei Bay prohibit that. It operated its launches in the off-limits swimming zone next to the Hanalei Pier, again, prohibited by the Hawai'i Administrative Rules, but okayed by DOBOR. It operated a floating heliport in Hanalei Bay violating the spirit of the North Shore development plan's ban on helicopter landings on the North Shore. Its helicopter flew over Hanalei town five (5) to ten (10) times a day ignoring the Fly Neighborly Agreement that protects the North Shore from the worst impacts of helicopter overflights. It was essentially an offshore Transient Vacation Rental (TVR) and heliport for the super wealthy. DOBOR just told us to "get over it," "that there were several more of these super yachts on their way," and "they are the way of the future." Indeed this August, the three hundred ninety (390) foot long, and that is equivalent to the height of a thirty (30) story building, super yacht moored in Hanalei Bay. DOBOR once again indicated that it would allow the ships launches to use the Hanalei Pier.

All of this is just wrong. Hanalei Bay is not a commercial harbor. It is not Waikīkī, but it is clear that DOBOR has no problem with allowing ships of any size to moor in Hanalei Bay, has no problem with allowing such ships to use Hanalei Pier for loading and unloading of their tenders, no problem with allowing the ships launches to operate in and threaten Hanalei Bay's swimming zones, and no problem with allowing Hanalei Bay to become a heaven for floating vacation rentals and heliports where for a fee of just over twenty dollars (\$20) a day, DOBOR will allow you to rent a location more beautiful than anything than any hotel can provide. That is a great business model and that is why it is a great threat. This wave of commercialization and offshore development needs to be stopped before it is too late. If not action is taken, we can expect Hanalei Bay to change in character from a quiet recreational area to a far more commercially oriented one as the bay itself, the waters of the bay itself, become a resort for tourist and super yachts. Such a transformation would be a major loss for every resident of Kaua'i who comes to Hanalei to enjoy its beauty and peace.

Today, there are two (2) very big threats to Hanalei's tranquility and character. On the waters, super yachts threaten to transform Hanalei Bay into a yacht harbor like the Virgin Islands, and on the land, Pierre Omidyar's threat to transform the area into something like Laguna Beach with structures built along the hillside threaten us.

Ms. Fountain-Tanigawa: Three (3) minutes.

Council Chair Furfaro: Just continue, Carl.

Mr. Imparato: But today at the County Council, there are also two (2) important measures that go hand in hand. Chair Furfaro's Resolution calling for Department of Land and Natural Resources (DLNR) to prohibit vessels longer than seventy-five (75) feet from entering Hanalei Bay is very important because while the State clearly as not concern with the commercialization of Hanalei Bay's waters, hopefully a strong message from the County Council will motivate DLNR's leadership to do the right thing. I thank Chair Furfaro, and I urge the Council to support this Resolution.

Equally important as this Resolution is to eliminate the language in Bill No. 2461, Draft 5 that would allow setbacks for development along Hanalei's river ridge to be cut in half. We need to be successful on both of these matters as it would truly be pointless to deal with one threat and not the other. Again, I thank Chair Furfaro for bringing this Resolution to the table and hope that County Council will do the right thing for Kaua'i with its votes on this Resolution.

The last thing I would like to raise is something that is based on the newspaper article this morning where it is alleged that recent case law, specifically, Young vs. Coloma-Agaran, has restricted the State's ability to regulate in Hanalei Bay. That is untrue. The State continues to have the authority to regulate boating in Hanalei Bay. The only thing that the court said in that ruling was that a complete prohibition on federally licensed commerce in Hanalei Bay, which is what was proposed in 1998 Cayetano ban, was unconstitutional. The court's concern was that the ban distinguished between commercial and recreational vessels. That very same court decision said that statutes that address legitimate local concerns with incidental effects on interstate commerce are permissible. That court ruling said that legitimate even-handed local regulations are permissible. The court ruling explicitly recognizes that the State has the ability to prohibit all motorized vessels, all vessels of a certain size, or all vessels meeting certain criteria relevant to the ecological protection and conservation or other legitimate concerns. Finally, that same court ruling in discussing preservation of scenic beauty, said that the State, and I quote, "may limit the size of vessels allowed to use Hanalei Bay." The basic premise of this proposed Resolution is sound. The State of Hawai'i can and should address the problem of large vessels in Hanalei and I hope that the County Council, led by Chair Furfaro's Resolution, will send that message to the State. I thank you for your time.

Council Chair Furfaro: Thank you, Carl. Carl, I do want to also point out that in my research the State does recognize certain recreational harbors that need this type of protection and similar policy statements are in place for Waimea Bay on O'ahu, for Hanauma Bay on O'ahu. I almost elevated our snorkel beach here. Just along those same lines, I just want to say those kinds of guidelines are in place by the State at those other bays.

Mr. Imparato: That is good to know.

Council Chair Furfaro: Thank you, Carl. Questions? No. Thank you, Carl.

Mr. Imparato: Thank you.

Council Chair Furfaro: Barbara.

BARBARA ROBESON: I am a document person. I did not bring them all. Barbara Robeson for the record. I am totally in support of this Resolution that is proposed by our Chair. This has been an ongoing issue in the big picture of protection of Hanalei Bay for many, many years. This morning before I left, I pulled out a few things from my files. Here was a 1980 meeting that was held in Hanalei at the cafeteria by the United States Corps of Engineers. They reference the North Shore of Kaua'i recognized in the early 1960s, and they talked about protecting the Hanalei Bay and the North Shore area. They said, "The purpose of this review is to determine those projects, which have become inappropriate for one reason or another and should therefore, be de-authorized," and that continued. There are several issues and you probably have a history of this. If you remember it now, the issues concerning all of the commercial boats at the Hanalei estuary. It went way down from forty-three (43) or something like that number of boats to about seven (7). The Hanalei Pier, the unloading and the loading of passengers off that pier, that was another long time issue. Then, the concerns that Carl just mentioned. These very large vessels that have been coming into Hanalei Bay.

I did bring a few documents. Short history example. Here was one, Ocean Resources Management. This was 1990 and in this one of course, it acknowledges and discusses the North Shore of Kaua'i and the problems that were there, the

acceptable limits, and the vessels that were operating in that particular area. Another one was Ocean Recreation Management Plan. This was 1990, I think. Then, this big thick one, Statewide Cruise Facility Study 1999. This one talks specifically about the Hanalei area, the Hanalei Pier, and the impacts on that. I have given you may documentation examples, but then I have another scenario example.

If the large vessels continue to come into Hanalei Bay and they off load those passengers onto the recreational pier or if they load their passengers into a helicopter and they could fly those helicopters now up to the expanded Princeville airport that is being proposed, and then they could unload those passengers there and then those passengers could take a little limousine ride to their mansions in the new resort area. That is a really bad example of the potential that could happen. Anyway, I hope you will support this excellent Resolution. Thank you very much, Mr. Chair.

Council Chair Furfaro: Thank you, Barbara. Questions? Thank you, Barbara.

Ms. Robeson: Thank you.

Council Chair Furfaro: Maka'ala.

Ms. Ka'amoana: Aloha Council Chair and members. I am Maka'ala Ka'amoana and I am speaking now as the Executive Director of the Hanalei Watershed Hui. The Hanalei Watershed Hui enthusiastically supports this Resolution and thanks the Chair for introducing it. Our organization coordinates the Hanalei Makai Watch Program which is a DLNR sponsored effort which provides monitoring and enforcement support of the human uses in Hanalei River and Bay. We are keenly aware of the conflicts that occur when very large vessels moor in Hanalei Bay. It is important to note that Hanalei Bay is not a harbor. It is not designated by the State as a harbor, does not have any harbor facilities, and cannot accommodate large vessels. In fact, large vessels are instructed to moor outside the mooring area in order to avoid potential safety issues evidencing the conflict.

In the DOBOR rules for Hanalei, exceptions are made for traditional vessels such as Hōkūle'a and Hikinalia, and we support those exceptions and the size that the Resolution calls for allow for Hikinalia, which is the larger of the two (2) traditional vessels to be allowed. With the exception of five (5) permitted commercial tour boat users, Hanalei Bay is strictly a recreational resource. Hanalei Pier is designated as a recreational resources and is not intended as a "docking" facility for vessels too large to use the designated ingress/egress zones provided. Recent experience has taught us that these large vessels are no different than a floating hotel or vacation rental. They just have bigger, louder, and more invasive toys. They do not fit in, in more ways than one. We urge this Council to pass this Resolution which will encourage the State to make rules to address this inappropriate use of our community and support the character of Hanalei. *Mahalo.*

Council Chair Furfaro: Thank you, Maka'ala. Come right up.

Ms. Punohu: My name is Anne Punohu and I would like to support all of the speakers that spoke before. When I read the Resolution, I was in shock. Since when do we fly helicopters out of Hanalei Bay? It is the most ridiculous thing that I have ever heard of, but then when I look at what is happening development wise, I can see a big circle. Like what Aunty Barbara Robeson talked about, in her scenario is exactly, I believe, and not to be a conspiracy theorist of anything, but it seems to me that is what is about to happen to our home. I mean,

North Shore is my *hale*. I cannot imagine us agreeing to help them out. So, let us not.

I had a question on a technicality on this Resolution. Does it only last for this session? Will the Resolution stand? Can we look at an Ordinance to come out of the Resolution using the Special Management Area (SMA) saying that, "Sure you can come into the bay, but you cannot get off of your boat, you cannot fly your helicopter, and your people cannot step one (1) foot on the land?" That is something that can be looked at. My question is, how long will the Resolution last? It does not have a force of law and can we look at immediately looking at a County Ordinance to address this issue? The reason why, look at DOBOR. State agency. For them to say something like that to anybody that lives in Hanalei, how rude is that? Who are they to say that? Who are they to come in and say, "Oh, sure you can do your thing and operate with impunity in the bay of Hanalei," which is the jewel of Hawai'i? I am very upset hearing the things that are planned for Hanalei and Princeville area. I see it as an unbroken circle between the boats, the million dollar whatever, and the shoreline people being able to build wherever they want to. I am incensed with all of it. Anybody that would vote in favor of any of those elements of any of this big circle that I see is not doing right by the people of Kaua'i. *Aloha*. Thank you. Thank you very much for proposing a Resolution. *Mahalo*.

Council Chair Furfaro: Thank you. Is there anyone else that wishes to testify?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Mr. Kagawa.

Councilmember Kagawa: Yes, Chair. Since you are the maker, I have a question on the intention of the Resolution. One of the things that I noticed was that the cruise ship, I guess, they regularly park for a night, I guess, outside of the harbor. They are pretty far out. I guess if they come too far in, they will probably touch bottom. Is the intention that this, I guess, discourages the cruise ship from parking there overnight or is it excluding the cruise ship?

Council Chair Furfaro: Well, the definition of the bay is from the point at Honoiki across to Waikoko. That is the line from point to point.

Councilmember Kagawa: Okay.

Council Chair Furfaro: There is a number of history of the bay being somewhat shallow and several ships getting into trouble in the bay. That is the definition. Honoiki until Waikoko on the other side.

Councilmember Kagawa: I guess my question then is, is it your judgment that the cruise ship is parked outside of the bay or inside of the bay?

Council Chair Furfaro: Well, there is a little bit of history here that I need to reflect on to answer your question. For example, when Amfac, Inc. sold Princeville originally, Eagle County Development Corporation (ECDC) had a plan to actually put a harbor in Hanalei River. ECDC listened to the community and they said, very clearly and maybe some of Barbara's documentation, that Hanalei is not a commercial harbor. Hanalei is a recreational bay, but they do not want the marina. Eagle County Development Corporation listened. There was no marina put in into that plan. Secondly, the heliport issue, that one (1) ship was three hundred

ninety-two (392) feet long. The seventy-five (75) foot limit as mentioned earlier does allow for certain charter fishing and it does also allow for science, technology, and cultural things like Hōkūle'a and other Polynesian canoes. So, that is acceptable. They were flying off of the deck of the three hundred ninety-two (392) foot and it is very clear in the North Shore plan, there is one (1) heliport of the North Shore and that is at Princeville. In fact, they have removed the heliport that used to be at Hanalei Plantation. There is no heliport site. We had this activity going on in the middle of the bay and I guess really, the message was kind of in a spirit of cooperation to make sure we understand the commercial bays on Kaua'i are Port Allen and Nāwiliwili. Those are the commercial bays. Hanalei is clearly recreational and the pier is dedicated to that for a certain distance off the pier. When the two (2) ships were in the bay, they were utilizing the pier as if it was a shuttle service and quite frankly, posed some challenges to the kids that used that as their swimming area. That is some of the history there.

Councilmember Kagawa: Well, can I interpret your answer as though, yes, we do not want the cruise ship parking where they are currently?

Council Chair Furfaro: We are saying, that it is our policy to keep the bay as a recreational bay.

Councilmember Kagawa: Thank you.

Council Chair Furfaro: And not for cruise ships.

Councilmember Kagawa: Thank you. I have a question for Mauna Kea, if that is okay with you, Chair.

Council Chair Furfaro: Sure.

There being no objections, the rules were suspended.

Mr. Trask: Aloha. For the record, First Deputy County Attorney, Mauna Kea Trask.

Councilmember Kagawa: Yes, thank you, Mauna Kea. I know that you are a good reference to ask about this because you are familiar with the fishing and the Hanalei Beach area. Congratulations on that Public Broadcasting Service (PBS) fishing show that you did. It was excellent. I think it reflects the North Shore fishermen. Are you okay with the language as is? Do you think passing something like this is fine?

Mr. Trask: Well, I think that is a good question. As you all know, Resolutions are statements of policy. There is really no legal effect to this. So, you are not looking at any type of lawsuit for passing this. It is a policy statement. It is a complex issue though. Mr. Imperato touched on a case, Young vs. Coloma-Agaran, that touched on this to a certain extent. Essentially in that case real briefly, the Ninth Circuit Supreme Court determined that what is known as the ban, which is Governor Cayetano's year 2000 ban of no commercial boats in Hanalei. They determined that the ban violated the United States (U.S.) Constitution under the Supremacy Clause and the Commerce Clause. Given that, the court need not address other counts the plaintiffs brought as far as alternative theories of relief under the Equal Protection Clause and the Substantive Due Process Clause. In that case, it stated that –and it was a balancing test that you have perform. In the printed part, it provided the ban is unconstitutional under the Doctrine of Conflict Preemption pursuant to the Supremacy Clause by prohibiting plaintiffs from engaging in

commerce expressly authorized by their Federal licenses. In that case, pursuant to Federal law, plaintiffs Federal licenses authorized plaintiffs to engage in commerce in Hanalei Bay. It is really a Federal licensure issue under the Coast Guard. However, the case, had some interesting aspects to it in that the State proffered public safety type and environmentalist type concerns regarding commercial activities in the bay in that case. The court made clear there was no evidence that the ban was enacted in response to or reasonably relates to a concern for environmental degradation of Hanalei. In that case, Garing testified that the ban was not the product of a study of adequacy of existing regulation or the actual impact of plaintiffs vessels. He testified further, and this was I believe the expert for the State in that case. He testified further that he was unaware of any assessment of the environmental impact of commercial vessels operating at Hanalei Bay, that the Boating Division itself lacks a capacity to perform such a study, and that the results of a previous privately funded study of the impact of motorized vessels on the Hanalei estuary environment were negative. You can look at that case in showing that there is a lack actually. There is a dearth of information relating to that. The ruling that case could have changed if there was a body or product they could point to, to justify the claims made.

Again, going back to the legality of it, it is not a legal issue. It is a policy one, but this Federal issue is going to pop up. I would suggest in order to reinforce it because I think the intent is clear and I would like to stay away from good or bad. That is your call, but the policy and intent, I think the community would support. Directed also not just at the State, but also the Federal government. I think that there are processes available to separately designate Hanalei bay, like Chair Furfaro said, as special and unique, not unlike Waimea Bay, not unlike –I always say Hanamā‘ulu too. What is it? Hanauma Bay. It is by Sandy Beach Park, the one where you go that you can never get down because of traffic. I think those are viable options to reinforce this type of thing, to actually give it a Federal designation or a separate State designation so it is more solid.

Council Chair Furfaro: Are you good? Okay. Again, the key part there, I think, is this is not a matter of Ordinance or law.

Mr. Trask: Correct.

Council Chair Furfaro: The fact of the matter is, it is a policy statement and it sends a message to the State that we want to be good stewards of Hanalei. We want to watch our kids in recreational areas. We want specific management of the pier. We do not want to turn it into a commercial venture. We have one (1) heliport in the North Shore plan. That heliport is at Princeville, not on the back of the cruise ship. That is the policy statement.

Mr. Trask: I would like to state one (1) more thing and clarify that. What I said regarding the Young case does not inhibit the State's ability to regulate anchorage and mooring privileges or other types of things in the bay. As far as whether or not –enforcement issues as you all know, is in a separate issue. I cannot speak to that. That is a State Department issue.

Council Chair Furfaro: Thank you. Any other questions for the County Attorney? Thank you very much. We have taken public testimony, everybody that has signed up.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Discussion? JoAnn.

Councilmember Yukimura: Thank you very much, Chair, for introducing this Resolution which contains a very strong and clear stand on the part of the Council. I think it is important. I want to thank the community for speaking up, in particular Carl and Barbara, for reminding us of the long history of efforts to commercialize the Hanalei area. Oh, and Maka'ala too. She has been involved for a long time, and the valiant and the courageous efforts of citizens to protect against the commercialization which would have such a detrimental impact on our lifestyle and on our recreational enjoyment, but also it would have a terrible impact on the economic asset of a beautiful and non-commercialized place. It is a very, very important issue and I am thankful for this Resolution by which the Council will be able to stand strongly for protection of this exquisitely beautiful area and the people who use it.

Council Chair Furfaro: Anyone else wishes to speak before I call for a vote? Mr. Bynum.

Councilmember Bynum: Just...

Council Chair Furfaro: Excuse me, JoAnn, could you shut your microphone off?

Councilmember Yukimura: Sorry.

Councilmember Bynum: I just want to thank Chair Furfaro. As I said earlier, Chair Furfaro thinks about stewardship and sense of place. This is, on the last day, an example of the way he thinks and his responsiveness to the community. This is a serious concern. The people that testified gave really clear indications how we are really probably perhaps not being served by the State in their ability to regulate. Gee, when does that ever happen? I just want to thank you and let you know I am in total support.

Council Chair Furfaro: Thank you. Vice Chair Chock.

Councilmember Chock: Thank you. I want to also thank the Chair. I am in full support of this Resolution and I also want to thank Mauna Kea for the direction that it should be properly presented, Federally protected. I would love to see it move in that direction. For me, it comes down to just this feeling of always being imposed upon. I was there when some of these ships came in. I call them a ship because it is that big, and the feeling that I had. Traditionally, whenever we go to somewhere or someplace new, we ask for permission. That is part of our process. I never heard the *kāhea*, and the *kāhea* used to be allowed need be loud enough for us to be able to make some decisions on how it is we are going to accept it or not. At this point, we are not ready to receive such calls. Again, I think that we need to take that into consideration the impacts and implore our State agencies to assist us with the preservation of what is important for this community. Thank you.

Council Chair Furfaro: Mr. Kagawa.

Councilmember Kagawa: Yes, thank you. I will be supporting this Resolution. The first time I saw the cruise ship parked out there was about two and a half (2½) years ago. I was out on the lawn of the Hariguchi family and we were just cruising. I was saying, "Hey, what is that cruise doing out there?" They, said, "It always parks there." They are just easy-going people. They did not say, "Oh, get that thing out." I mean, in looking at the situation, you have this beautiful beach and you



are looking out to the sunset, and instead you see it is a nice looking ship, but it is not nature. I think they definitely can park elsewhere. I am glad that we kind of clarified it. We can send the minutes along with that, that yes, we do not want that cruise liner parking right smack in the middle of the bay, and I guess taking away from the view every weekend. Thank you. Thank you, Chair.

Council Chair Furfaro: I just want to thank all of you for your comments. JoAnn.

Councilmember Yukimura: I just want to clarify. This is a call to DOBOR, the Division of Boating & Ocean Recreation, to cooperate and to use their power of regulation based on local values and local planning goals and objectives. I mean, it is like, please State, please give some attention to this local concern.

Council Chair Furfaro: Yes. I want to thank everybody for their comments. I think Mr. Chock, who is calling to us on our opinion? The *kāhea* is not there. The fact of the matter is we are good stewards about our sense of place, we are more than welcomed to share, but we have some general guidelines about stewardship. It is just a policy statement that is sent over to the State. They need to get closer to managing the resource. On that note, I will do a roll call, please.

The motion for adoption of Resolution No. 2014-49, was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7*,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: We have seven (7) ayes. On that note, it is twenty (20) minutes until 1:00 p.m. We need to take a lunch break, and we will be back at twenty (20) minutes until 2:00 p.m. I also want to let you know that we will be going into Executive Session on return.

There being no objections, the meeting recessed at 12:42 p.m.

The meeting reconvened at 1:40 p.m., and proceeded as follows:

*(Council Chair Furfaro was noted as recused.)*

*(Councilmember Hooser was noted as not present.)*

Councilmember Chock: Aloha and welcome back from lunch. Let it be known that Council Chair Furfaro had to step out and also that he is recused from this next item of which we are trying to move to Executive Session. If I could have the item read. County Attorney.

There being no objections, the ES-772 and ES-773 were taken out of order.

There being no objections, the rules were suspended.

Mr. Trask: Thank you, Chair and Honorable members of the Council. For the record, First Deputy County Attorney, Mauna Kea Trask. This is for ES-772 and with the Chair's permission, I would like to read both concurrent.

Councilmember Chock: Yes, please.

EXECUTIVE SESSION:

ES-772 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing and request for authority to settle the case of Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-773 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session for the Council to consult with the County Attorney regarding 1) the fact finding/investigation on three parcels of real property, Tax Map Keys (4) 3-3-018-002, (4) 3-8-004-001 and (4) 3-7-001-001, concerning each parcel's compliance with the Agricultural Dedication Ordinance and the Sediment and Erosion Control Ordinance (Grubbing, Grading and Stockpiling) and related matters and 2) the process for an investigation pursuant to Section 3.17 of the Charter of the County of Kaua'i and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Chock: Thank you, Mauna Kea. What I would like to do is take any public testimony or discussion on each item first, and then if we have consensus, we will vote on going into Executive Session. Do we have a question for Mauna Kea or further discussion?

Councilmember Bynum: Discussion.

Councilmember Chock: Okay.

Councilmember Bynum: You wanted to do each one separately?

Councilmember Chock: Yes, or maybe I can ask public testimony first.

Councilmember Bynum: Sure. Please.

Councilmember Chock: Anyone would like to testify on this item, item ES-772 first? Seeing none, we will move to discussion on this.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Councilmember Bynum.

Councilmember Bynum: Thank you. The public testimony earlier in the day related to this matter, we are not allowed to ask questions and answers, but I want to say that this is the 31<sup>st</sup> if the testifiers have it accurately. I just wanted to put a couple of things on the public record. One is that this started as the Council responding to cross complaints in the Office of the Auditor. It is our responsibility to do that. We went into Executive Session because there was complaints happening in the office and it falls under the –and it is confidential what we speak because it is personnel related. At some point during this process, and it is on public record now, the Council sanctioned the Auditor by suspending him with pay for one (1) week for concerns that were raised as a result of that investigation. Then, the County Auditor sued the County of Kaua'i and sued the Council Chair in his individual capacity, like not as a Councilmember. Since then, the County has been responding to a lawsuit from Mr. Pasion. His complaint is part of a public record as is the County's response to his complaint. There are public records at the courthouse that any citizen can obtain to understand more about what these concerns are. I assume that the testifiers today, as I challenged them to read these documents did not because it would be difficult to continue to say the things that they are saying if you were presented with the facts that are available the public. That is all I wanted to say about this. Thank you.

Councilmember Chock: Any other further discussion this item, members? If we would have no objection to moving into Executive Session, I would like to also ask for public testimony on ES-773. Anyone would like to testify?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Seeing none, I would like to ask if there is any further discussion. Councilmember Bynum.

Councilmember Bynum: Thank you very much. This Executive Session is a result of an agreement between the Administration and the Council to do something that is a little unprecedented, which is to do a joint fact-finding investigation where the information collected by Councilmembers and Council Staff was shared with the Administration and one of our County Attorneys acting as an independent serving both the Council and the Administration at the same time for fact-finding with an agreement that all of that information would be shared rather than the model that we have had in the past where it is like pulling teeth and going back and forth. I really want to thank the Mayor and the Executive Director or the Managing Director for being willing to go into this process collaboratively. There is also on the public record, a commitment to further investigate this, if warranted, and it will be warranted, in my opinion, done independently not by the Council or the current County Attorney because of the breath, the depth, and the complexity of the investigation.

*(Councilmember Hooser was noted as present.)*

Councilmember Bynum: That is will be done independently. I expect them to make these comments today on another agenda item, which would move forward the process of getting those independent eyes as was discussed here a couple of weeks ago by the Managing Director. Unfortunately, that is not on the agenda and we will figure that out later. Just to close this out, I worked for over a year and half seeking documents that were withheld from me and this Council until just recently. Those documents show that in broad terms, that on both the grading and grubbing

and on agricultural dedication, our current laws were not followed and that there have been breaches of those that need to be dealt with both civilly in terms of rollback taxes. As elected people, we have a fiduciary duty to the people of Kaua'i. When our laws are violated, our first duty is to apply those laws on the benefit of the people of Kaua'i. What happened in this instance, unfortunately, is that for months, the information about the scope and depth of this problem was withheld from this Council while the Administration helped create new documents and new legal things to try to give landowners and seed companies a legal way to keep their favorable tax status and to avoid applying the penalties that are clear in the law. That was several months ago to now, and we know that these problems exist. I have confidence that the Administration and the Council working together will address these issues in a systematic and comprehensive way that meets our fiduciary responsibility to all of the taxpayers of Kaua'i. Thank you.

Councilmember Chock: Anyone else would like to comment on this before we call for a vote? I too, am looking forward to the briefing and I am hoping that it will give us a clear indication of what we need to invest in internally or if we need to hire externally to address these concerns that have been coming up. With that, I will call for a roll call to go into Executive Session.

SCOTT K. SATO, Council Services Review Officer: We need a motion.

Councilmember Chock: Do we have a motion? No? Can I get a motion to move into Executive Session?

Councilmember Yukimura moved to convene in Executive Session for ES-772 and ES-773, seconded by Councilmember Bynum.

Councilmember Chock: Motion and a second. Roll call please.

The motion to convene in Executive Session for ES-772 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Rapoza, Yukimura	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL – 1.

Mr. Sato: Six (6) ayes.

The motion to convene in Executive Session for ES-773 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Rapoza, Yukimura, Furfaro	TOTAL – 7*,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Council Chair Furfaro was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Councilmember Chock: We are going to go into Executive Session at this time. I hope we would be out by 2:30 p.m. on these two (2) items. Wishful thinking. Maybe not. Let us try it.

There being no objections, the Council recessed at 1:50 p.m. to convene in Executive Session.

The meeting was called back to order at 3:25 p.m., and proceeded as follows:

*(Councilmember Hooser, Councilmember Kagawa, and Council Chair Furfaro were noted as not present.)*

Councilmember Chock: Aloha and thank you for your patience as we plan the rest of the day out today. What we are going to do is some Bills for First Reading and just clean up some of the agenda because we are currently waiting for some of the amendments for the Shoreline Setback Bill to get completed.

*(Council Chair Furfaro was noted as present.)*

Councilmember Chock: So, it is not ready is what I am saying. We are going to have to try and get through some of the other items. We are going to move the agricultural dedication and agronomics to later on the agenda if I am understanding the process here, Chair. With that, I will turn it back over to you.

Councilmember Chock returned Chairmanship to Council Chair Furfaro.

Council Chair Furfaro: I do believe it is closer to 5:00 p.m. or something on the Agronomics / Agricultural Use Definition / Reporting Bill? Is that what I understand?

Councilmember Kagawa: At least.

Council Chair Furfaro: At least 5:00 p.m. or 5:30 p.m. I will have to probably depart by that time. I just want to let you folks know, and you wanted to do the Shoreline Setback Bill now? I am trying to get a confirmation.

Councilmember Chock: Chair, if I could. Because the amendments are not ready for the Shoreline Setback Bill...

Councilmember Yukimura: They are not...

Councilmember Chock: ...we had hoped that we might clean up whatever we can because they said that they only need ten (10) to fifteen (15) more minutes to do so.

Council Chair Furfaro: Okay.

Councilmember Chock: If we cannot, if by that time we cannot, my suggestion would be to move to some of the other important agricultural bills that we are talking about.

*(Councilmember Hooser was noted as present.)*

Council Chair Furfaro: Okay.

Councilmember Chock: Thank you.

Council Chair Furfaro: We are going to do some housekeeping cleanup here, and then I just want to reestablish that if it goes too late, I may have to depart because I have my wife at the doctor. Where did we leave off? We will take care some of the housekeeping items.

Ms. Fountain-Tanigawa: Chair, we are on page 5, Resolution No. 2014-50.

Resolution No. 2014-50 – RESOLUTION SUPPORTING A LOW INTEREST LOAN PROGRAM TO ASSIST IN THE CONVERSION OF CESSPOOLS TO SEPTIC SYSTEMS FOR KAUA'I RESIDENTS

Ms. Fountain-Tanigawa: We have one (1) registered speaker, Maka'ala Ka'amoana.

Councilmember Bynum moved for adoption of Resolution No. 2014-50, seconded by Councilmember Chock.

Council Chair Furfaro: I have a motion to approve and I have a second. We will take testimony from Maka'ala.

There being no objections, the rules were suspended to take public testimony.

Ms. Ka'amoana: Aloha Council Chair and members. I am testifying as the Executive Director of the Hanalei Watershed Hui. We enthusiastically support this Resolution. The Hanalei Watershed Hui supports the purpose of this Resolution, and thanks to Chair for introducing it. We appreciate the proactive incentive this Resolution provides. We would add the following to your considerations: we note the absence of any referral in the Resolution to the North Shore and respectfully ask that a "whereas" be added or an existing one be amended stating, "Whereas in *moku* Halele'a on the North Shore of Kaua'i, many homes and businesses are located in the riparian and coastal areas that utilize cesspools including many aged and failing systems that contribute bacterial nutrient and chemical pollution to the marine environment. In addition, in Hanalei alone," please remember this number, "seventy-five (75) Transient Vacation Rentals use cesspools." These businesses likely contribute to more than their proportionate share of pollution as there are often more occupants in these "houses" than the average owner-occupant residents. Two, the Hanalei Watershed Hui is currently preparing proposals for funding of the Hanalei Watershed Management Plan, which includes replacement of forty (40) cesspools in the riparian and coastal environments of Hanalei River and Bay.

This Resolution if agreed to, would significantly support and expand the potential of our effort and magnify the reduction of the pollutants produced by cesspools in the Hanalei Bay watershed. County contributions to a loan fund, would add leverage and match to available Federal funds and boots confidence, inspire upgrades of failing polluting systems, and encourage additional funding. *Mahalo nui loa* for your support of this Resolution.

I met last week, with the Department of Health and Environmental Protection Agency (EPA) representatives in Hanalei because we have now have an approved Watershed Management Plan to identify on the ground, those improvements that we can make to reduce the pollution and we have identified the forty (40) cesspools. These are not a mystery or a secret. They are in fact in a map in the Watershed Management Plan. When I showed them the draft Resolution, "giddy" would be the right word. It is huge. It is huge because the Federal funds will be limited. We can

only match them with County or private funds. We cannot match them as you all now, Federal to Federal. If in fact you proceeded with this loan program, we could probably to three (3) times as many. Even though your Resolution is Kaua'i-wide, I do not have any authority over other places, but certainly for the North Shore, this leverages our effort enormously. We have done the work. Nobody needs to do anything but give us...

Ms. Fountain-Tanigawa: Three (3) minutes.

Ms. Ka'amoana: ...the match. *Mahalo*.

Council Chair Furfaro: Thank you. I do want to share with a few of you before I recognize Councilmember Yukimura, the Department of Health has revised its draft on its cesspool ruling that we should be aware, but I do not think it has the effect on the purpose of our statement of policy. They have sent to us, and I think all members have received this, that they are dealing with a Statewide total now of eighty-eight thousand (88,000) cesspools Statewide that address areas inside of the shoreline or streams, wetlands, or near drinking water wells. Our number on Kaua'i to respond to that, there is nineteen thousand seven hundred ninety-three (19,793) that are near or within seven hundred fifty (750) feet of the shoreline. Our Resolution is to help finance those that are within two hundred fifty (250) feet, but there are nineteen thousand seven hundred ninety-three (19,793) Statewide, one thousand seven hundred (1,700) are Kaua'i. The Resolution is intended also to help those in the Kekaha/Waimea area that are along those shoreline areas. They have also sent out or published another one hundred seventeen (117) pages of wastewater systems that will be covered by these new Hawai'i Administrative Rules. We have heard from Larry Dill, our County Engineer, without a strong commitment about the financial part recognizing the need to do such in those areas pointed out in the Resolution. That is available to all members of the Council. It just came over today, and he makes five (5) keen points on the items, JoAnn. I was just getting everybody current, but I want to make sure everybody understand, this is only a policy statement.

Ms. Ka'amoana: Understand.

Council Chair Furfaro: This requires the Administration, if there are revolving funds available, we certainly want to use funds that are available through the State first. The Resolution is dealing with those families who are at the median income level plus twenty percent (20%) that could be available if we had to fund it ourselves. JoAnn, you have the floor.

Councilmember Yukimura: Thank you, Chair. I hope Larry Dill has been called. I think it is important to have him here.

Council Chair Furfaro: Larry Dill has been called or not been called? I thought Larry Dill was here in the building. I saw him.

Councilmember Yukimura: I think Scott has been the contact person.

Council Chair Furfaro: No, he was here in the building.

Councilmember Yukimura: That was before we went into Executive Session. In the meantime, I have a question for Maka'ala.

Council Chair Furfaro: Excuse me, before you go any further. Do I assume that somebody is looking for Larry Dill? Yes, somebody is? Okay.

Councilmember Hooser: I just have a housekeeping and process question.

Council Chair Furfaro: Yes, go ahead.

Councilmember Hooser: Housekeeping and process question. Chair, you had mentioned earlier that you have to leave at a certain time.

Council Chair Furfaro: Yes.

Councilmember Hooser: I know there is two (2) or three (3) other items that, I think, it would be good to have all of the members here to have their vote, that would be good. I do not know if we could jump to those items possibly immediately after we finish this. There is the Shoreline Setback Bill; the Agronomics / Agricultural Use Definition, Reporting Bill; and then the other Executive Session. I think it would be really helpful to have your *mana'o* for those items. If we could somehow make that happen without impacting your personal commitments.

Council Chair Furfaro: Understood.

Councilmember Hooser: Thank you.

Council Chair Furfaro: I will try my best, but I think you all know the delicate situation that I have health wise with my wife. JoAnn, you have the floor.

Councilmember Yukimura: Thank you. With respect to the North Shore, I know that you all have been doing tremendous work in terms of the sewage systems. There was at some point, a thought about a wastewater system that would be, I guess, state-of-the-art rural system in the nature of a sewer system. So, a treatment...

Ms. Ka'amoana: What the Hanalei Watershed Hui did was convene a series of over a year process of meetings and discussions regarding a centralized wastewater system, specifically for Hanalei, not for the entire North Shore. The community decided that it preferred a constructed wetland kind of system because they did not want a big gray concrete box. We cannot site it. You can only build a wetland in a place that is not wet. In order to site a constructed wetland in Hanalei, we are up into the foothills on State owned property. Council Chair and I have discussed the potential of some sites that others that still privately owned up there. It still requires a pump. When you consider the potential for infrastructure and piping the entire –we are still just talking about Hanalei, piping the entire town of Hanalei, digging up sand which every time we do now, we find *iwi*, the cost of the pump, and all of that. It makes more sense to us now, and we have said so in the Hanalei Watershed Management Plan strategies and recommendations, that we are now recommending the replacement of cesspools with state-of-the-art septic systems, the new tertiary septic systems, that are three (3) chambered, do not have a leach field, and the water that comes out of the end of that process is (inaudible) to potable. The hydrologist says he would drink it. Instead of piping the whole town, we are now recommending in the Department of Health (DOH) approved plan, that we upgrade to state-of-the-art septic systems.

Councilmember Yukimura: I presume that means a cost far more than fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000) a septic system.

Ms. Ka'amoana: It would depend on location. Some of the houses, because size is a feature of cost. If we use the tertiary system, yes, they are



more expensive, but they are also larger and you could use two (2) homes sharing one (1). It could be. It is a pump systems with a solar pump. Do not make the assumption. Certainly, today's cost are more than they were when we first cost them, but the cost in this plan and the discussion I had with DOH last week, we are talking about twenty thousand dollars (\$20,000) to twenty-five thousand dollars (\$25,000) per septic system for the conventional system and about thirty thousand dollars (\$30,000) to thirty-five thousand dollars (\$35,000) for the tertiary system.

Councilmember Yukimura: If you say there can be some sharing and things, there needs to be some plan. I mean, it may be that the County could qualify for the conventional loan program to fund a Hanalei system if there is...

Ms. Ka'amoana: I am not interested participating in a Hanalei system. It is not what we were funded to do.

Councilmember Yukimura: No, I am talking about a system of tertiary septic systems.

Ms. Ka'amoana: Okay, that is a different word then. Individual wastewater systems, it may be that the County would qualify for funds of putting them on County property, whether or not there is funds for private individuals, I do not know. The whole point of this exercise was so that the community of Hanalei qualifies for the EPA DOH funds to pay for the upgrade for cesspools. So, that work, we have done. If there are other matching funds available, they would need to be County funds or individual funds.

Councilmember Yukimura: Okay. Matching funds are things we have to discuss in the context of budget.

Ms. Ka'amoana: Of course.

Councilmember Yukimura: We do not commit to anything here. It seems to me that you already have access to an existing State level fund.

Ms. Ka'amoana: That is true.

Councilmember Yukimura: Okay.

Ms. Ka'amoana: But they are Federal funds. They are EPA funds.

Councilmember Yukimura: Right.

Ms. Ka'amoana: That come through the Department of Health.

Councilmember Yukimura: Right.

Ms. Ka'amoana: They are not State funds.

Councilmember Yukimura: But they do not have to come through the County...

Ms. Ka'amoana: No.

Councilmember Yukimura: ...and we do not have...

Ms. Ka'amoana: They will come through me.

Councilmember Yukimura: And we do not have to recreate a system of disbursal of grans or moneys?

Ms. Ka'amoana: No. The Watershed Hui will be the receiver.

*(Councilmember Bynum was noted as not present.)*

Ms. Ka'amoana: The reason we are supporting the Resolution is that if you did these funds, they could match to us and we could do twice as many upgrades. That is all I am saying to you.

Councilmember Yukimura: But we would be getting from the same source.

Ms. Ka'amoana: No.

Councilmember Yukimura: The Sewer Revolving Fund. That is what would be the source...

Ms. Ka'amoana: I understood you.

Councilmember Yukimura: ...of these moneys.

Ms. Ka'amoana: It is Federal money?

Councilmember Yukimura: It is the State's...

Ms. Ka'amoana: That is okay.

Councilmember Yukimura: ...Revolving Fund.

Ms. Ka'amoana: That is okay.

Councilmember Yukimura: Which we do not even know if we qualify for such a disbursal.

Ms. Ka'amoana: Well, that is the reason I am supporting it is because the work that we have done could be leveraged and expanded, and we could benefit more of our residents if it was available to us as match. This is on the front burner, hot right now because we are going to be providing a proposal soon.

Councilmember Yukimura: But you could also just go directly to the State Revolving Fund and ask for it too if you are already...

Ms. Ka'amoana: I do not know if that is true. I will check with the Department of Health.

Councilmember Yukimura: ...if you are already in partnership with the Department of Health.

Ms. Ka'amoana: We are, but we will see. I do not know if that is true for this particular program.

Councilmember Yukimura: Right. I am not sure either.

Ms. Ka'amoana: I certainly will ask.

Councilmember Yukimura: Okay. Thank you.

Council Chair Furfaro: I would just like to take a moment and make sure we have some clarity here. This is the State implying to us what we need to do. Here is this mandate about converting to cesspools, of which they do not necessarily approve moneys along with it.

Ms. Ka'amoana: That is right.

Council Chair Furfaro: But they do give us the mandate.

Ms. Ka'amoana: That is right.

Council Chair Furfaro: How serious is the issue? The issue is pretty serious. I say through a whole series of town meetings about the coral bleaching in Hanalei, and at the time, I was Secretary/Treasurer for the Princeville Water System. Mr. Dill was the Managing Director.

Ms. Ka'amoana: Yes.

Council Chair Furfaro: They said the problem with the bleaching is related to all of this misinformation, the injection wells at Princeville. Princeville does not have injection wells.

Ms. Ka'amoana: Have any injection wells.

Council Chair Furfaro: I want to make sure we are very clear that the issue here is to put this on the radar screen. We have very nice explanations on many options from Mr. Dill today.

*(Councilmember Bynum was noted as present.)*

Council Chair Furfaro: Thank you, Larry. It came over today in E-mail, but we are basically making a statement that those that are still on cesspools within two hundred (200) feet of the shoreline, within two hundred (200) feet of rivers and streams, we want to help you. The State is saying, "If you sell your property, you are mandated to change it to a septic system within twenty-four (24) months of the sale." There are a lot of people that are not able to reach out for those kinds of funds.

Ms. Ka'amoana: That is right.

Council Chair Furfaro: Whether it becomes Revolving Funds from the State or in fact maybe the possibility of money available from the County. Now when we talk about money available from the County, I am talking about when we go to float our next bond.

Ms. Ka'amoana: Yes.

Council Chair Furfaro: This is money that replenishes what we borrowed and a half percent (0.5%) additional fee for the Administration and so forth. It is not really a layout from the County, but it is a funding mechanism in concept so we can get this done. We now know with global warming and so forth and Statewide issues with bleaching of coral, the bleaching gets accelerated by some of the bacterial activities in the ocean. It is basically saying as a statement, "Hey, figure out what

options we have, look at this, and just make a policy statement.” Are we willing to help fund people where they replenish the account over a period of time at a half percent (0.5%) more than what we can borrow the money?

Ms. Ka‘amoana: This policy statement encourages the State and the Federal government to give Hanalei money to do that work that we are going to do anyway. The people are going to partner. The people are not going to get this for free. They are going to pay twenty percent (20%), twenty-five percent (25%), or thirty percent (30%) of the cost themselves. The nine (9) that we replaced in the riparian zone of the Hanalei River in 2005, we paid for the whole thing. None of us can do that anymore, not you, not us, and not the Federal government. If this body chooses to support this Resolution and this policy statement, it will encourage those who are funding those areas on Kaua‘i that have done that work, that have identified the systems, that have done the monitoring, and that have the data. We are not flying blind here.

Council Chair Furfaro: Again, I want to state the fact that whatever the solution and the guidelines over there, it is a statement where we know the Hawaiian value of *kōkua*. We are willing to help with our issue. Now, is it a General Motors product? Yes, because it is a general product, but are we asking for the Cadillac?

Ms. Ka‘amoana: No.

Council Chair Furfaro: Or the Buick or the Oldsmobile? It might just be the Chevy.

Ms. Ka‘amoana: The Chevy.

Council Chair Furfaro: But we have to do something.

Ms. Ka‘amoana: Always the Chevy, Chair.

Council Chair Furfaro: Very good.

Ms. Ka‘amoana: Thank you.

Council Chair Furfaro: Thank you.

Ms. Ka‘amoana: I appreciate this opportunity not only to remind you of the work that your communities are doing and your non-profits are doing, but to identify another opportunity to partner community and government. That is always the right way.

Council Chair Furfaro: Thank you. We are going to ask Mr. Dill to come up. Mr. Dill, I am going to give the floor to Councilmember Yukimura. None of us have really had the time to digest what you sent over. JoAnn, let me give you the copy of what I do have in case...you got it? Okay.

Councilmember Yukimura: Perhaps you could –I appreciate you sharing with us some of the comments that you made to the Department of Health regarding both their upcoming mandate and also the County’s concerns and support for it. Could you maybe summarize this because I am only looking at it now actually? Although I know you briefed me.

LARRY DILL, P.E., County Engineer: For the record, Larry Dill, County Engineer. I did not begin a copy of my letter over. So, if I may...

Council Chair Furfaro: Here. Give him mine.

Mr. Dill: ...borrow that.

Council Chair Furfaro: Give him a copy.

*(Councilmember Kagawa was noted as present.)*

Mr. Dill: I can summarize. Generally speaking, the Department of Health is –obviously, I cannot speak for the Department of Health. I guess my understanding of the Department of Health’s goal here is to protect the environment, which of course, the County of Kaua’i fully supports, but we recognize that these efforts are not going to come without some cost. It will ultimately be borne by the citizens. It is a combination of doing what we can to balance the environmental needs with addressing what we can, the economic ramifications to our taxpayers on Kaua’i. I will just zoom through this letter and summarize as I go along. The first point is we support the banning of new cesspools Statewide. As we know, they are already banned on Kaua’i, but there are still cesspools going in on two (2) of the other Counties. I forget which of the other Counties already also has a complete ban. Two (2) other Counties do allow new cesspools under certain situations. We support banning installation of new cesspools.

Our second point addresses the Department of Health’s proposal to reduce the threshold for the requirement for new developments as to when individual wastewater systems would not be allowed and they would be required to put in wastewater treatment works. The number used to be fifty (50). A new development, if you are putting in a new development, you would opt to say fifty (50), maybe it is forty-nine (49) units.

Council Chair Furfaro: It is forty-nine (49), Larry.

Mr. Dill: Forty-nine (49) units, then you could do that with individual wastewater systems, which in Kaua’i, generally means septic systems. The new rule proposes to reduce that from fifty (50) down to fifteen (15). Any development with greater than fifteen (15) units would have to put in wastewater treatment works. Obviously, there is a cost issue there involved with capital costs of installing, designing, permitting, installing, and operating a new wastewater treatment system say for a sixteen (16) lot development.

*(Councilmember Bynum was noted as not present.)*

Mr. Dill: I am not sure where the crossover happens. At some point, the cost say fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000) per unit for an individual wastewater system becomes less expensive than putting in say a wastewater treatment system for a larger group. I am not sure where that crossover line happens. We just expressed to DOH, our concern about the cost of doing that. Their logic for choosing that number was number was that it makes the residential requirement the same as the commercial. For a commercial system, if you are generating fifteen thousand (15,000) gallons per day, then they require you to put in a treatment works as opposed to a septic system. A fifteen (15) lot subdivision is equivalent to a fifteen thousand (15,000) gallons per day. So, they are making that requirement the same for both residential and

non-residential. That is their logic there. Again, we support the environmental goal of that particular effort, but again, there is a cost concern.

*(Councilmember Hooser was noted as not present.)*

Mr. Dill: They also wanted to remove the exceptions for developments with densities of one (1) dwelling per acre or less. We commented back on that to say generally speaking, those are what the developments are because you have so few dwelling units per acre, they are lower density, then their concentration of treated wastewater to the environment is much less, and therefore, the impacts are much less than the higher density developments. Environmentally, they are not going to achieve that much in that one. On the economic side, because those are lesser density developments you have fewer customers per mile of pipe. That is just a unit cost and that is because it is much more expensive to install and to maintain. On both counts, we requested some relief on that.

Regarding the requirement to have this come into play upon the sale of a property, we generally with reservations, supported that as a logical time to make this happen. We felt that the effort ought to be focused in the areas where you had the most egregious concerns rather than doing a blanket requirement. In their report, they have issued quite a lot of information to support their rationale. It is really worth looking into, but they indicate some of the areas that are the highest concern, and I will read them during my letter here, that there are cesspools in areas within a two (2) year groundwater travel time to the intake of a public drinking water well.

*(Councilmember Hooser was noted as present.)*

Mr. Dill: So, they want to protect out drinking water resources, of course. Cesspools within two hundred (200) feet of a perennial stream channel, and cesspools within two hundred (200) feet of shoreline. It was our recommendation that we focus on these areas as perhaps the initial phase of the elimination of cesspools Statewide where we get the biggest "bang for our buck," if you will, recognizing that the Department of Health has only certain resources that they could devote to processing of applications for new septic systems and such. We have limited resources for engineers to design to design them and limited resources for contractors to put them all is. We had to focus on the areas where we would receive the most benefit. That was I think, the third point in the letter.

The fourth point spoke to how the cost might be mitigated some. We commented that the State should provide access to the State Revolving Fund program or establish another zero (0) or low interest financing program to assist homebuyers in upgrading their cesspools. As you are probably familiar with, the State does have two (2) Revolving Fund programs: one for the wastewater side and one for the drinking water side. Those programs are available to municipalities and actually also to private entities, but they focus on the municipalities to do projects that would protect water or wastewater issues, environmental issues. We suggested that one of their quoted priorities in these programs is they prioritize water quality protection projects that corrects surface water quality impairment or eliminate or prevent groundwater contamination. This effort to eliminate cesspools, we feel certainly qualifies as a priority. We suggested to them that they make the State Revolving Fund (SRF) program available to these projects as well. What they are used to doing is loaning significant amounts of funds to the Counties for large projects. This, I think, would be a new thing for them to incorporate in their program, but not too much of a stretch. That was our first suggestion. We also suggested they implement a tax credit for homebuyers who upgrade their cesspools. If you take look at what

they have done for say photovoltaic (PV) energy systems, that was a pretty successful program whereby they managed to fund a lot of those or helped to fund those, help to finance them, and then they were becoming more prevalent.

Council Chair Furfaro: Now, Larry, on that note, Councilmember Yukimura has some questions. I know you just touched on the highlights, but I want to get to her specific questions since she has been raising her hand for a while.

Mr. Dill: Okay. I only have one (1) more point if I...

Councilmember Yukimura: Okay, go ahead.

Mr. Dill: It is a specific one. There was a comment in the rules that "Effluent testing shall be performed by an independent laboratory," but County wastewater laboratories are already doing many of our own wastewater consistent with constituent testing. There are quality assurance programs that demonstrate it to the State and we have requested that be allowed to continue to happen. Thank you.

Councilmember Yukimura: Larry, thank you. You are suggesting –this Resolution is supporting a low interest loan program at the County level. I am hearing you say that it might be appropriate for the State to just do it from the State program?

*(Councilmember Bynum was noted as present.)*

Mr. Dill: Yes, that was our comment that I put in the letter.

Council Chair Furfaro: Excuse me, I just want to add to that. Larry, do you know how flushed the State's account is?

Mr. Dill: Yes. Now, if I may, I have been trying to catch up on all of my E-mails today. I got an E-mail at 7:00 p.m. from the Department of Health on their response to all of the comments and questions they received. I just forwarded that to all of you about an hour ago when I was reading them. They have addressed actually a number of our comments in their responses, including they are proposing to establish a low or zero (0) interest loan for homeowners to upgrade their systems as part of their SRF program. Also, they are also proposing to instead of doing a blanket approach to all of the cesspools, they are going to focus it on highest areas of concern. So, they are doing that. I have not finished going through it, but generally speaking, I think they have been very responsive to the comments they have received from us and others.

Council Chair Furfaro: Okay. I am going to have to interrupt here because we are going to have to take a tape break. What you are saying is because we introduced this Resolution and so forth, in the one hundred seventeen (117) page documents that we got back to them, they are now willing to *kōkuu*?

Mr. Dill: It is certainly appears that way.

Council Chair Furfaro: Right? Even the introduction of the Resolution has made some progress.

Mr. Dill: Sure.

Council Chair Furfaro: Because now they are saying, "We have money. You do not have to go out and set aside money."

Mr. Dill: Yes.

Council Chair Furfaro: We will continue on this after we take out tape change.

Mr. Dill: Okay.

Council Chair Furfaro: Tape change will not be more than three (3) minutes. Are you ready over there? Ready? Tape change.

There being no objections, the meeting recessed at 3:57 p.m.

The meeting reconvened at 4:02 p.m., and proceeded as follows:

Council Chair Furfaro: I am going to pass the gavel here to Vice Chair, and we are going to continue on this one, and go to some of the other bills as we are waiting for some other amendments.

There being no objections, the rules were suspended.

Council Chair Furfaro: Larry, I think extracting the testimony that we did from you whether it is us making a statement about opportunities to get this done or we can piggyback with the State to get it done through some borrowing powers is important. I want to make sure you understand, I want to know how much in the Revolving Fund can be available to us. They have their own roles when it comes to financials, but it is very important that if we go out and secure funds from the State, we know it is actually available.

Mr. Dill: Yes, okay.

Council Chair Furfaro: I am going to turn the meeting over to Vice Chair Chock.

Chair Furfaro, the presiding officer, relinquished Chairmanship to Councilmember Chock.

Councilmember Chock: Thank you, Chair. As we discuss the opportunities that are before us, my understanding from Chair Furfaro is the willingness to at this moment, receive this Resolution.

Mr. Dill: Okay.

Councilmember Chock: I will entertain more discussion on that and a motion to do so. I am not sure if we got to all of the public testimony as well.

Council Chair Furfaro: We did not, I think.

Councilmember Chock: Why do we not do that first? I just wanted to give the direction that we are headed in. Thank you, Larry, if there are no more questions here.

Council Chair Furfaro: No, I have one more statement. Larry, I really want you know, it is important you get back to the body to tell us how much is



available because this thing is going to go dormant as long as we know, but water quality, I mean, I do not want to be swimming in Hanalei and I get plenty *kane* afterwards. Okay?

Councilmember Chock: Great. We will expect a follow-up from our County Engineer. Thank you. Anyone would like to testify on this item? Seeing none –oh, sorry. Anne.

Ms. Punohu: *Aloha.* Anne Punohu. I am not the kind of person to really trust the State to take care of Kaua'i. I feel that way about a lot of issues and I think that this is very important to protect our people who could not afford to take care of the situation.

*(Councilmember Yukimura was noted as not present.)*

Ms. Punohu: I am in favor of the Resolution and it would be nice if we could get some sort of assurance from the State that they would be kicking in enough so that we would not need the Resolution; however, I do not think that would be the case. I think that this is important that we have an extra thing in place for our people that need it. I also want to thank Jay for doing the Resolution, but I also want to thank Maka'ala Ka'amoana because I have known her for decades and she has been relentless on this issue. She did so much work that she brought before you today. I think that she really set the pace for how we can do water quality on the island. So, between the two (2), the Resolution and Maka'ala and her work, I think that we can show the State how to do things right rather than waiting for them to take care of Kaua'i because all they care about is O'ahu. That is just my personal opinion on it. Anything that we can do as an extra insurance policy to help our people who could not afford to take care of this mandate, I think, should be done. *Mahalo.*

Councilmember Chock: Thank you. Anyone else would like to testify on this item?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Councilmembers, further discussion on this?

Council Chair Furfaro: Yes, I have.

Councilmember Chock: Chair.

*(Councilmember Yukimura was noted as present.)*

Council Chair Furfaro: What I want to say is the fact of the matter is we have just received this Resolution. The fact of the matter, it is parked somewhere, but I want to make sure the burden of pursuing this is with Public Works and with Mr. Dill to make sure that that finances are available to get these loans out here to work with the State. It is truly their *kuleana*, but this is something that we put on the radar screen and we can always put it back on the radar screen. Thank you very much.

Councilmember Chock: Thank you. Further discussion?  
Councilmember Kagawa.

Councilmember Kagawa: I think we definitely need to look for some way to help our residents if they are going to be asked or forced at some time to convert and spend fifteen thousand dollars (\$15,000), twenty thousand dollars (\$20,000). I

mean, I cannot imagine how some of them would be able to come up with the money. I had a thought that perhaps the State giving a tax credit similar to what they allow for renewable energy like Photovoltaic, and not only thirty-five percent (35%). I mean, a huge tax credit on their State Tax Return. I think something in that area could at least help residents afford to make the changes that we all seek to have. I think ten thousand (10,000) cesspools on Kaua'i, to think of that number is just huge. I definitely think that it is unreasonable to think that our residents would be able to afford to do it on their own. I definitely support some kind of help whether it be us, the State, or Federal government. Thank you.

Councilmember Chock: Further discussion? I will entertain a motion to receive here.

Councilmember Yukimura moved to Receive Resolution No. 2014-50 for the Record, seconded by Councilmember Rapozo.

Councilmember Chock: Alright. Roll call, please.

The motion to Receive Resolution No. 2014-50 for the Record was then put, and carried by the following vote:

FOR RECEIPT:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Councilmember Chock: Seven (7) ayes. Motion passes. We are going to move to these Bills for First Reading. They are first reading. I just want to remind our Councilmembers, if we can get through them pretty quickly. We will check in again with our Shoreline Setback Bill.

#### BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2563) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-782, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Moana Kai and Pono Kai Seawall – \$1,600,000*): Councilmember Yukimura moved for passage of Proposed Draft Bill (No. 2563) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for December 17, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Councilmember Kagawa.

Councilmember Chock: First and a second there on this item. Anyone would like to testify on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Seeing none, further discussion?  
Councilmember Bynum.

Councilmember Bynum: Yes, I am going to vote for this on first reading. I just want to put something on the record that there may be an alternative to rebuilding the Pono Kai seawall. The County has been involved in two (2) ocean studies; one (1) in Kapa'a specific to this area and one (1) in Po'ipū. Those two (2) combined, give us an opportunity to work with the State to get Kaua'i on the radar for doing beach nourishment long-term both in Kapa'a and in Po'ipū. I will not go into details of that, but I have discussed it with Ruby Pap and Sam Lenmo at the State. We put a lot of effort into this. I would encourage the Councilmembers and the Administration to look at those studies and dialogue as you go through this money bill process, and see if that is an alternative that we want to explore because it has potentially long-term benefit. Just imagine Pono Kai does not have a seawall, but it has sixty (60) feet of beach in front of where the seawall is right now. That might be preferable to a seawall with the ocean hitting the seawall. We can bury that seawall and put sand there. It is a big project, but if the State is involved with us, it is an economic development issue for the State, just like Waikiki and Po'ipū in particular. It is a part of our economic engine here and preserving that beach and avoiding seawalls is something that is a very noble purpose. Thank you.

Councilmember Chock: Thank you. Further discussion? Seeing none, roll call.

The motion passage of Proposed Draft Bill (No. 2563) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for December 17, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Councilmember Chock: Next item, please.

Proposed Draft Bill (No. 2564) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE HOUSING AND COMMUNITY DEVELOPMENT REVOLVING FUND (*Housing Agency, Special Projects – \$35,877*): Councilmember Yukimura moved for passage of Proposed Draft Bill (No. 2564) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for December 17, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Councilmember Rapozo.

Councilmember Chock: First and a second there. Would anyone like to testify on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Seeing none, any discussion members? No discussion. Roll call, please.

The motion for passage of Proposed Draft Bill (No. 2564) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for December 17, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Councilmember Chock: Seven (7) ayes. Motion passes. Next item, please.

Proposed Draft Bill (No. 2565) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Real Property Assessment Software – \$100,000*): Councilmember Kagawa moved for passage of Proposed Draft Bill (No. 2565) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for December 10, 2014 at 8:30 a.m., and that it thereafter be referred to the December 10, 2014 Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee Meeting, seconded by Councilmember Rapozo.

Councilmember Chock: Thank you. We have a motion and a second there. Anyone would like to testify on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Seeing none, discussion here or question?

Councilmember Hooser: Discussion.

Councilmember Chock: Discussion, please.

Councilmember Hooser: Real briefly, Chair. I will be voting “yes” on first reading, but I could very well vote “no” down the road. This is a multi-year commitment that we are making. I have no doubt that it is important to the Tax Department, but I believe we need to draw a line in the sand and stop taking money out of the Reserve Fund. If this money is indeed needed, which I believe it probably is, the Administration should consider taking it out of other budgets elsewhere in the fund. I think that should be the policy moving forward. We know we have a big deficit coming up and rather than just continuing to use the unassigned balance as a piggy bank, I think we need to stop doing that as soon as possible. I will be voting “yes” on first reading.

Councilmember Chock: Thank you. Further discussion? This is scheduled for Committee, same day as Committee. Roll call on this item.

The motion for passage of Proposed Draft Bill (No. 2565) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for December 10, 2014 at 8:30 a.m., and that it thereafter be referred to the December 10, 2014 Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee Meeting was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Councilmember Chock: Seven (7) ayes. Motion passes. Just checking in with our Shoreline Setback Bill, are we ready for this item?

Council Chair Furfaro: If not, I would like to have a personal privilege.

Councilmember Chock: Okay. We are going to take a personal privilege for Chair Furfaro at this moment, and we will move to your amendments. Chair.

Council Chair Furfaro: Thank you very much. As we talked earlier, and I want to thank you all for the accolades this morning, but I do work for Kaua‘i and what we need to put on the Kaua‘i radar screen, obviously, with my two (2) Resolutions today. I do want to say that I want to pass out to the members a position statement that I will be pursuing because I do not think I will be running for public office again, but I will be hopefully doing something that I can for our stewardship. There have been six (6) of us working very closely over the last few years; Peter Nakamura, members from our legal department, people from our Planning Department, and so forth, about having an option to have discussion about the future of Maha‘ulepu coastal area. In particular, I was very pleased to have one (1) discussions with Warren at Grove Farm, I have had an opportunity to speak with Lea Hong at the Hawai‘i Island State Land Trust, and I have had an opportunity to speak with the Mayor about support. Again, this is about putting things on the radar screen. This is piggy-backed with the fact that sooner, not later, we are going to have an opportunity to look what happens with *kīpūkai*. One thousand one hundred (1,100) acres along the south shore. To start with, our group put together a vision

that I would like to share with all of you. It is something for you to digest because for me, this will not go to sleep. Unfortunately, with the controversies that we have had on the opportunity for agricultural land in that area and the dairy and so forth, we have not been able to proceed. To the best of our ability, we have at least a vision and we have an opportunity in the near future to talk about that area, especially as it comes to the General Plan. What are we doing about the General Plan? How do we identify three hundred sixty (360) acres in that area that eventually can abut the *kīpūkai* area. Remember, Mr. Waterhouse said, and this is back in 1984, that he would like to deed one thousand one hundred (1,100) acres to the State for presentation, maritime life sanctuary, and a very passive park. It would be an exceptional idea to pursue it through a reasonable negotiation with those landowners to see if we cannot acquire the other parcels in that area. What you have is our group's vision and I do want you to know that Warren over at Grove Farm has been very, very interested in what we have to say. We are far from a conclusion, but you have to start with a vision, and that, I circulated to all of you right now. Thank you or the personal privilege.

Councilmember Chock:  
Reading, Shoreline Setback Bill.

Thank you. If we can go to Bills for Second

#### BILLS FOR SECOND READING:

Bill No. 2461, Draft 4 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (*Amendments to the Shoreline Setback Ordinance*)

Ms. Fountain-Tanigawa: Vice Chair, we have two (2) registered speakers at this time.

Councilmember Kagawa moved for adoption of Bill No. 2461, Draft 4, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Bynum.

Councilmember Chock: We have a motion and a second. Councilmember Yukimura, I am guessing what we should probably do is circulate all of the amendments and then take public testimony.

Councilmember Yukimura: I do not know that there are any amendments at this point.

Councilmember Chock: Oh, okay.

Councilmember Yukimura: Unless somebody has. We actually were just trying to get the Draft 4, which is what came out of Committee. I believe because some Councilmembers asked in the past, this is not an official version, but it shows the changes from the existing law through the full drafts to the version that came out of Committee. There is one (1) amendment, apparently.

Councilmember Chock: Okay. It looks like this one is introduced by Councilmember Bynum. I will give the floor to you, Councilmember Bynum.

Councilmember Bynum: As discussed in the last meeting, this Bill has been to Council and Committee and back to Committee and back to Council. I do not know that all seven (7) members have been able to weigh in. This amendment is the same as the amendment that Councilmember Chock offered earlier to remove

entirely, the bright line provision. That was amended last time; however, in my –I do to think all seven (7) members have been able to be here at once to vote on this as I recall. I have asked this question from the beginning. Why do we have this amendment? Who is it serving? I have not heard an answer yet that is acceptable to me. I have this amendment that I would like all seven (7) members to consider. We will be diminishing the coastal protections, in my opinion, if this amendment remains in the Bill. I will make one (1) more shot at it.

Councilmember Chock: Councilmember Hooser.

Councilmember Hooser: If that was a motion, I will second it.

Councilmember Bynum moved to amend Bill No. 2461, Draft 4, as circulated, as shown in Floor Amendment No. TB #1, which is attached hereto and incorporated herein as Attachment 1, seconded by Councilmember Hooser.

Councilmember Chock: Thank you. Any further questions for the introducer? No? Are there any other amendments? We have to vote on this one actually. It has been circulated. Why do not do that first then? I will go ahead and open it up for public testimony at this time. We have two (2) scheduled speakers.

There being no objections, the rules were suspended to take public testimony.

Councilmember Chock: If we could call them up.

Ms. Fountain-Tanigawa: Vice Chair, we have three (3) registered speakers now. The first registered speaker is Carl Imparato, followed by Maka'ala Ka'amoana.

Councilmember Chock: Mr. Imparato.

Mr. Imparato: *Aloha* Councilmembers. My name is Carl Imparato. I am speaking today on behalf of the Kaua'i group of the Sierra Club. The Kaua'i group of the Sierra Club appeals to you, Councilmembers, once more to eliminate the special preferential treatment that the current draft of Bill No. 2461, Draft 4 would create for two (2) special categories of development on shoreline lots at the expense of the environment and the expense of the public good. First, Section 8-27.3(A) of the Bill proposed to create a wind fault for development on lots that are more than one hundred forty (140) feet deep and elevated above rocky shorelines. Instead of using the formula that applies to other lots, which require setbacks from sixty (60) feet to one hundred (100) feet depending on lot depth, the setback for large lots would be reduced to sixty (60) feet. For developers of large lots, the setback requirements could be cut almost in half.

Second, Section 8-27.3(D) proposes to create a special category of lots, lots that are between one hundred (100) and one hundred forty (140) feet deep and located on rocky shorelines for which no coastal erosion study has been performed. For that category of lots, the minimum setback would be forty (40) feet rather than the sixty (60) foot minimum that applies to all other shoreline lots. There is no credible reason why small lots on rocky shorelines for which no coastal erosion study has been done should have a smaller setback requirement than lots on rocky shorelines for which a study has been done showing a zero (0) erosion rate. You are saying where I do not know something, I am going to basically operate less conservatively.

What is comes down to is that there is no legitimate reason for gifting special treatment to these two (2) categories of lots. They are indeed various coastal hazards

associated with these two (2) categories of lots and there is no established justification for reduced setback requirements for these categories of lots. By weakening the requirements that are in place today, the reduced setback requirements would create very negative visual impacts for the public along coastal areas of many parts of Kaua'i. The single formula that is in Section 8-27.3(C) should apply universally. Making this change would better protect the public interest, it would eliminate the proposed weakening of view plane protections that are currently in place in the Comprehensive Zoning Ordinance (CZO), it would make the Ordinance simpler, and it would make the Ordinance much fairer by removing the favoritism for the large land developers who have been instrumental in creating the preferential treatment language of the Bill.

The Sierra Club's September 24<sup>th</sup> testimony to the County Council described in detail the harms that would be created by cutting half the setback requirements for bluff development. To those impacts, we had the negative impacts on native sea birds to which others have subsequently testified. The Sierra Club September 24<sup>th</sup> testimony and Judy Dalton's personal testimony also went into detail to demonstrate that there is no credibility...

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Imparato: ...to the assertion that the County's Special Management Area (SMA) rules or any other parts of the County's zoning rules adequately protect public view planes and the beauty of Kaua'i's coastal areas from shoreline bluff development. It is simply inconsistent to profess concern about protecting the environment and the visual beauty of Kalihiwai or Hanalei or any other shoreline area below bluffs while supporting preferential treatment provisions that would reduce setbacks requirements for favorite groups of developers. We ask that you therefore, amend Bill No. 2461, Draft 4 to remove the preferential treatment language in Section 8-27.3(A) and (D). If that preferential treatment language is not eliminated before a final vote on the Bill, then we would ask that you vote to kill the Bill as the Bill would do more harm than good for Kaua'i's environment and its people. That is the testimony that we have from the Sierra Club. I will update that by responding to the amendment that has been proposed by Councilmember Bynum. That basically does deal with one of the two (2) concerns. It deals with the major one of those two (2) concerns. Section 8-27.3(A) is the major concern, and as I read Councilmember Bynum's Bill, this would eliminate the special favoritism that is in Section 8-27.3(A). We strongly support that and urge you then to approve Councilmember Bynum's amendment. Thank you.

Councilmember Chock: Next speaker.

Ms. Fountain-Tanigawa: Next speaker is Maka'ala Ka'amoana, followed by Anne Punohu.

Ms. Ka'amoana: Aloha Chair and Councilmembers. I am Maka'ala Ka'amoana. For the purposes of this testimony, I stand in my previous testimony as the Executive Director of the Hanalei Watershed Hui, as Vice Chair of Hui Ho'omalua I ka 'Aina, and in special thanks you Councilmember Bynum for this amendment as a representative of Defend Hanalei. We strongly support your amendment. We believe that this particular section is quite simply a special interest loophole as it existed before the amendment for developers of large lots on bluffs above the shoreline. We do not think that without this amendment, this whole should be absolutely killed. It would do more harm than good. This amendment makes it tolerable. The section that the amendment addresses benefits the Pierre Omidyars, the Kaua'i Lagoons, the Alexander & Baldwin (A&B), but it costs the people and the



environment of Kaua'i in visual impacts and sea bird impacts. *Mahalo* Councilmember Bynum for presenting this amendment and we strongly urge in all three (3) of those hats, that you pass the amendment. *Mahalo*.

Councilmember Chock: *Mahalo*. Next speaker.

Ms. Fountain-Tanigawa: The next and last speaker is Anne Punohu.

Ms. Punohu: *Aloha*. Anne Punohu. I am only wearing one (1) hat, that of Kaua'i's citizen and somebody who really loves the North Shore, but I really do not like this amendment either. It has become known as the bright line amendment and I would like to see it evaporate as quickly as it appeared. We just went through a thing where why are we targeting, talking about one and then giving to another. Did we not learn our lesson again? This exemption will only create a lovely Malibu Beach atmosphere for all of Kaua'i which will not be a joy to us, but a joy to developers who want to harden our shoreline. Did we not just look at a line item issue of one hundred sixty thousand dollars (\$160,000) to fix a sea wall which was put up by a developer and given an exemption for how many years? That is where you are going to be again. Also too, if you are talking about putting structures on the shoreline, a rocky shoreline like this, we have lovely things here called natural disaster. They are called hurricanes, possible tsunamis, and big storms. Nobody is going to say that those houses might just find their way onto the rocky shoreline itself. It is unnecessary. It weakens the Bill and frankly, whenever I testify in front of this body, I always say, "Why in the world do we keep amending things and weakening things when we could be strengthening things?" My opinion, get rid of this. *Mahalo a nui loa*.

Councilmember Chock: Thank you. Would anyone else like to testify on this item? We have one (1) more. Caren.

CAREN DIAMOND: Good afternoon Councilmembers. I will try not to be redundant because I know I have been advocating for you to remove the bright line exemption. Here we are where the Bill is probably going to be passed today, and we either will have a severely diminished coastal protection shoreline Bill or an amended one today. I am hoping that you sitting around the table will consider our amendments and consider...sorry. My name is Caren Diamond.

Councilmember Chock: Thank you.

Ms. Diamond: We hope that you will consider our amendments and we do support the amendment that Councilmember Bynum put forward. We would add to it, with the second portion of removing different parts of this Bill. When you talk about doing a Shoreline Setback Bill for people and someone says, "Well, what would my setback be?" At the moment, the way that the Bill is written, you would have to say, "Well, it depends. Are you on a rocky shoreline? Are you on a rocky shoreline that was studied? Are you on a rocky shoreline that is rocky or rocky shoreline that is clay?" You would have to have the Director go out and make a personal inspection and make a special determination what kind of substrate the soil is before he could tell you whether the shoreline setback laws apply to you or not. If the shoreline setback law does not apply to you and you are exempt from a determination, what does that mean? I hope somebody can ask somebody here and come up with an answer because if you are exempt from it, does that mean that no laws apply to you? Does that mean that some of this law applies to you, or if you are exempt, you are just exempt? For me, this language is really confusing. It is arbitrary. You have called out a certain set of people or properties that are on rocky shorelines that have not been studied and you are giving them a different benefit.

When Dr. Fletcher, when the study was commissioned, it was an erosion study of sandy beaches. There was no determination that there are no hazards on rocky shorelines or less hazards on rocky shorelines. That was not the scope of the study. The only scope was to determine the erosion on sandy beaches. There was no determination that there are no coastal hazards and that would certainly be a hard determination to make that there are no coastal hazards on the coast. If you are sitting around this table today, please consider removing the bright line exemption which is put in here making this Bill arbitrary and unfair, and look at making the Bill apply to everybody in an equal way. I know we have been redundant about asking that, but we have never been given the answers why it should be –why certain landowners should be favored or why certain properties should be favored or where those properties are. Then when you look at the news this week, you hear, Maha'ulepu, Princeville...

Ms. Fountain-Tanigawa: Three (3) minutes.

Ms. Diamond: ...they are wanting to develop the cliff areas.

Councilmember Chock: Continue.

Ms. Diamond: I hear that you folks, everybody wants to protect Maha'ulepu, but by passing this law, you are allowing the bright line exemption to apply to it when they come in for development. No setback determination will be needed. That is just one (1) place that is very special to everyone that would happen. Princeville, they are talking about seventy-five (75) houses on the ridges, on the cliffs. We are not talking about the Omidyar project, but the other Princeville project. None of it would have a setback determination according to the way this Bill is written right now. A setback on lots that are two hundred twenty (220) feet or bigger right now would be one hundred (100) feet, and the way that this Bill is written, it goes down to sixty (60) feet. I hope that in 2014 our shoreline setback laws are not diminished and that this Council sees fit to keep our laws strong, and do that by making an amendment to get rid of the bright line exemption. Thank you.

Councilmember Chock: Thank you. Chair.

Council Chair Furfaro: Is she our last speaker?

Councilmember Chock: I believe so. Anyone else would like to speak?

Council Chair Furfaro: Caren, I just have to say something here. Some of the testimony portrays the fact that we are dealing with zoning that has existed and people have paid taxes on it. We always talk about fairness and that making, as someone said, a special exception and so forth. I have to say, we are dealing with some challenges here. Do you know the density at Hanalei Plantation?

Ms. Diamond: I do not.

Council Chair Furfaro: It is six hundred (600) units. That is the density. This project is in front of us for eighty-seven (87) units. A shoreline bill is now being talked about as view planes. It is a shoreline bill. It is not a view plane bill. That is the reality. We talk about the seventy-five (75) units at Princeville. It is actually ninety-two (92) units. It is in the plan. I want you to know that they have land use approval for two (2) hotels and two thousand seven hundred (2,700) additional units. We want to put things in perspective here. I negotiated that down to the ninety-two (92) units in the agricultural subdivision. Morgan Stanley said to

me, "Well, Jay it is very nice that you are being sensitive about your hometown and so forth, but we have this entitlement." I convinced him to change and then they did not renew my contract, but you have ninety-two (92) units. You do not have two (2) more hotels and two thousand seven hundred (2,700) units. You can look that up in the land use plan. I think it is important that we understand there is some negotiation going on trying to get us to the right size, downsize, whatever you want to call it. The Westin, we all worked very hard to get it from five hundred (500) units down to three hundred fifty-eight (358) units. We did the same at Kukui'ula. They are entitled to three thousand (3,000) units. We got them down to one thousand five hundred (1,500) units. I just need to say this so you understand. Some of it is about back and forth negotiation. Some of it is trying to resolve errors that we made by taking back density without finding ourselves caught in a lawsuit or an entitlement issue. I am not saying that is the case here, but we have to paint the whole picture. We have a lot of people that have come to Kaua'i recently that have bought large pieces of property. I am equally concerned, but it does not help us to work from the outside at them. It is better we first get them to agree together what we can work on and work out. It would not be right if I did not say the other side of the story. There has been a lot of negotiations to get these things corrected and get down the density, and that had to be said. Thank you very much for your testimony.

Ms. Diamond: Thank you.

Councilmember Chock: Do you have a question Councilmember Yukimura?

Councilmember Yukimura: No.

Councilmember Chock: Okay.

Councilmember Yukimura: Thank you.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Discussion here? Councilmember Hooser.

Councilmember Hooser: I am speaking in support of the amendment as proposed by Councilmember Bynum. I believe that the underlying Bill is for me personally, fatally flawed and I will be unable to support the underlying legislation without this amendment. There is a variety of reasons. We have talked about this a lot and I will try to keep my comments short. I believe my job is to enhance the public interest. I believe that the underlying measure diminishes the public interest. I do not, for the life of me, understand why we are giving away this public benefit by diminishing the setback requirements. I just cannot understand that. I cannot support that. Therefore, I believe that this amendment as proposed by Councilmember Bynum is the way to go. As been stated earlier, there is a lot of influx of development plans for our community and I am concerned that we are going to pass something that is on the table here, the underlying measure without the amendment, and then those unintended consequences are going to come forth to haunt us and we cannot go back. To have a process to go back to expand the setbacks, it would be difficult at best, probably impossible. We have something in place now that creates a buffer zone, if you would, along the coastline whether it is for sea birds or whether it is for future public access, lateral access, or for view planes. I agree this is a Shoreline Setback Bill, but it also has very tangible impacts on view planes, very tangible impacts. It also has potentially very tangible impacts on sea birds and the public use of coastlines. Why do we take these benefits that the public now has? The

public has these benefits right now. Those are our benefits. The public has them and in a few minutes, if this Council votes the wrong way, the public will lose those benefits. The people that will benefit essentially has been said, are the big landowners and developers. We do not know what that impact is going to be, but we know they will benefit. Their property values, quite frankly, will go up immediately. The amount of buildable area, the locations of those structures will be enhanced. They will make money within minutes. As soon as we vote, their property values go up and the public values go down. Therefore, I am urging everyone to support Councilmember Bynum's amendment and then move forward to support the entire Bill. Thank you.

Councilmember Chock: Great. Anyone else would like to discuss this item before I call for the question? Councilmember Yukimura.

Councilmember Yukimura: Yes. Could we put on the overhead, please? In considering any amendment, we must first look at the purpose of the Bill. I have been working this Bill from the start and the history for the shoreline setback efforts will show that the primary goal is to protect life and property by setting back structures from coastal erosion and hazardous wave action, and to prevent the need for hardening of the shoreline that causes the domino effect and erodes neighboring properties and accelerates coastal erosion. The Bill as presently before us, accomplishes this main goal. Now, the focus of the proposed amendment is to remove the exemption that is in this Bill. All proponents of the amendment have been talking about this amendment as if it were just rocky shorelines. Of course you imagine a rock shoreline that is low, but you have to remember that there are two (2) other factors. One is height, which takes it out of shoreline wave action especially if it is high up and the other is Federal Emergency Management Agency (FEMA) maps that cover coastal hazards and flooding. The exemption requires that all three (3) have to be met. If you look at this diagram on the top, sixty (60) feet from the shoreline can be Contour 1 (C1) where the cliff is almost ninety (90) degrees up and then there is a large plateau area of sixty (60) feet or it can be a variety of terrain. Let us go the lower one, C6, which is a sloping upward sixty (60) feet which then causes House A to be on the bluff and House B also could be on the bluff as well. These are outside FEMA flood maps and they are high above the ocean.

Bluff. What is the danger to a bluff? The danger is, what do you call it? Collapse of the cliffside. What if the cliffside is geologically very sound? What is the rationale for setting it back more? We do not have any criteria to judge geology. It is not right to make something that is geologically sound to be set back because it might fall into the ocean. Furthermore, I do not think we have any incidents of any houses—we have a different kind of terrain. I must say that in the testimony submitted today by Caren and Barbara, I do not believe that photo is from Kaua'i and I do not believe it is sixty (60) feet also from the shoreline. We are looking at examples that are not depicting what the concern is on Kaua'i. If aesthetics is the concern—please may I have the next photo? This is on Kaua'i. You will see there are some aesthetic impact, but those are setback beyond one hundred (100) feet. The setback is not taking care of aesthetics. Aesthetics is taken care of by color and design, and there is no criteria in this Bill to deal with color and design. The concern therefore, is proponents so this amendment make it sound like the amendment is going to gut the main part of this Bill, but it is not true. The main part actually...

Ms. Fountain-Tanigawa: Five (5) minutes.

Councilmember Yukimura: ...is setting back those beach areas where the erosion and the coastal hazards are the greatest and will prevent people from coming in and trying to harden their shorelines, which will cause accelerating erosion. There

are many important features of this Bill including more public accountability, bigger notice, and ability to challenge the issues of shoreline setback.

Councilmember Chock: Councilmember Yukimura, I just wanted to let you know that the five (5) minutes have come.

Councilmember Yukimura: Thank you very much. I will conclude by saying that the question has been asked, "Whom does the exemption serve?" I think it is a fair question. It serves first, the landowner who will not have to go through unnecessary processes and expenses. This is applied mainly to homeowners because the large hotels will be covered by the SMA law. We tend to think of the landowner is a rich outsider who does not care about us and who we do not care about, but actually as we have learned from vacation rentals and taxes, sometimes the landowners are residents of Kaua'i who are our neighbors and friends. Anyway, it is not right or appropriate that a law discriminates based on who the applicant is. It needs to fall on all equally and we should not put anybody through an unnecessary regulatory process and expense.

The exemption also servers our Planning Department by not requiring them to do unnecessary processing and gives them time to do what they need to do, effective planning and enforcement. Finally, the exemption serves our community at-large. When laws are carefully designed to regulate effectively without causing undue hardship, time, and expenses on people whose actions do not need to be regulated because they do not affect the purpose of the Bill.

Councilmember Chock: Thank you. Councilmember Bynum.

Councilmember Bynum: I think I am done. To get movement from Councilmember Yukimura is really difficult sometimes. Today, there was a little movement. She said the main goal of the Bill, the primary goal is hazard protection. Every comment she just made is based on the premise that this Bill is only about coastal hazards. Well, I voted for this Bill. I know what the original purpose said. I even know what title is. It is not a coastal hazard protection bill, it is a shoreline setback bill. I agree. The main goal is hazard protection. A primary goal even. I will agree with that, but that is not the only goal. you look at the diagram, bottom line is you put that house right on the edge of the bluff, which will be allowed, it is going to have a huge visual impact compared to being setback forty (40) feet more. I do not see who this serves. I listened to that answer and I just do not see it. I am done.

Councilmember Chock: Thank you. Anyone else would like to talk on this item? I introduced this amendment a few times. It has not passed this body. I am thankful that there are other Councilmembers who see the interest that I share. I do not know if I need to go into anything further. I am just going to call for the question. Roll call on this?

Ms. Fountain-Tanigawa: Yes. Sure. This is on the amendment introduced by Councilmember Bynum, seconded by Councilmember Hooser.

The motion to amend Bill No. 2461, Draft 4, as circulated, as shown in Floor Amendment No. TB #1, which is attached hereto and incorporated herein as Attachment 1 was then put, and failed by the following vote:

FOR AMENDMENT:	Bynum, Chock, Hooser	TOTAL – 3,
AGAINST AMENDMENT:	Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,

RECUSED & NOT VOTING: None

TOTAL – 0.

Ms. Fountain-Tanigawa: 3:4. The amendment fails.

Councilmember Chock: 3:4, amendment fails. We will go to the main motion, right? Any further discussion on the main motion? Councilmember Bynum.

Councilmember Bynum: Now I am not really stuck and I am torn between –I believe there are many good things in this Bill. This is a Bill I want to pass this Council. Yes.

Councilmember Chock: Further discussion?

Councilmember Kagawa: First of all, I would like to thank Councilmember Yukimura, former Councilmember Nakamura, and yourself for putting in a lot of the hours. While we do not have total agreement that this Bill is the perfect Bill, I do believe that we have relied on the new science and expertise that will improve erodible shoreline protection. I think it is a huge improvement for the island and how we address building near shoreline areas. I will be supporting this Bill and I would just like to say that we do have, through the public testimony, and I give them credit. They did get an addition twenty (20) feet off the cliffside, from forty (40) feet to sixty (60) feet. I think it was not fruitless and I know they are still not satisfied with the decision of the body, but I think on the positive end, we have gotten away twenty (20) feet or thirteen (13) feet. Twenty (20) feet divided by three (3), another six (6) yards or seven (7) yards. Thank you.

Councilmember Chock: Thank you. Anyone else? Councilmember Rapozo.

Councilmember Rapozo: Thank you, and thank you all for participating, especially the public. I know some are disappointed; however, I think we must not ignore the purpose of the Bill. I think the purpose of the Bill is a protection bill. It is a protection of life and property bill. Some of the concerns, the visual impacts and sea bird impacts does not belong in a shoreline protection bill. It just does not. I mean, there are other avenues, which I think the Council will be exploring. As far as impacts, visual impacts, there are lots of examples of visual impact bills throughout the County that I think do very well. This Bill specifically was to address shoreline protection and protection of property and life. The rocky coastline is not erodible. It is not erodible and we can talk about a lot hypotheticals, what if, what if, what if, but the reality is, and I would agree with Councilmember Yukimura, that you put people through unnecessary costs and time. We are not just talking about the rich people. We have a lot of local families that have land on the beach or on the beachfront, shorefront. I mean I know the assumption is the Bill is to protect a few landowners. I do not see it that way. I see it as the normal reviewing of legislation and seeing where we can reach the necessary result, and I think that is what this Bill does. Again, the primary purpose of the Bill, in my opinion, the real purpose of the Bill is to protect life and property. I believe it does this, and I do appreciate it. I would have not supported the Bill if there was an amendment that took that minimum shoreline setback to sixty (60) feet, but I am comfortable with the sixty (60) foot amendment that, I think, was introduced by you, Councilmember Yukimura, a little bit back. Sixty (60) feet back from the shoreline certification that was done within twelve (12) month of the application. So, that is, in my opinion, I am very comfortable with that and I think it serves the original purpose of the Bill. Thank you.

Councilmember Chock: Thank you. Anyone else. Councilmember Hooser.

Councilmember Hooser: Yes, I will be very short. Just essentially what I said earlier, the public interest, the public benefit will be diminished once this Bill is passed. There is no way around that. The public interest will be diminished and private landowners benefits will be enhanced. That is a reality of what we are doing whether—we can look at it all kinds of ways, but that is what we are doing. We are taking away from the public. We are taking away from the public and we are giving it to private owners. The law that is in place now has greater public benefits period. This Council is about to vote to diminish those benefits, and I will be voting “no.” Thank you.

Councilmember Chock: Anybody else? Councilmember Yukimura.

Councilmember Yukimura: This has been such a long journey. I am really hopeful that in the long run, we will see what we have actually done. I think in general, this is still the strongest Shoreline Setback Bill in the Country, believe it or not. My votes here are not saying that I am not concerned about aesthetics or habitat, but this is not the proper bill in which to address it. If it were, it would have criteria that would have guided our permitting decision and there is none regarding that. It is really more appropriate in the SMA law, and if that is where we need to strengthen it, so be it. Ruby Pap also shared with me that in the California Coastal Commission system, and the SMA Bill was taken from the Coastal Proposition 18. Yes it was because I drafted it. They find a way to pull all of these different aspects together in one regulatory system. Maybe that is how we need to do it, but that will require a lot more thinking and process in order to do that. Councilmember Hooser says we are taking away from the public, I do not know what we are taking away from the public. There are many important good things in this Bill that I believe will prove itself and we will have to let that happen so everyone can see that.

Councilmember Chock: Thank you. There is a little bit more to this that I think we need to discuss. I think there is a statement that our County Clerk can make on our behalf.

Ms. Fountain-Tanigawa: Vice Chair Chock, there is an amendment that is a cleaned up version of everything that has been done. It is pretty self-explanatory. It will just replace and correct everything that was done so it is much easier to read. The codifier will have a much easier time reviewing it. If you need, our staff attorney can take the stand and explain it a little bit more.

Councilmember Chock: Please. Peter, thank you. There is a cleaned up version, all of the amendments that have come before of which Peter will introduce for us.

Council Chair Furfaro: I did not have a chance to speak.

Councilmember Chock: I am so sorry.

Council Chair Furfaro: That is alright. I will wait.

Councilmember Chock: We will introduce then...

Council Chair Furfaro: I will wait.

There being no objections, the rules were suspended.

PETER MORIMOTO, Legal Analyst: Peter Morimoto, Analyst for Council Services. I circulated this document which is a ramseyered version of the existing Shoreline Setback Ordinance. What I did was I took Draft 4 and ramsyered the existing Ordinance in accordance with Draft 4. Aida prepared a floor amendment that would basically take the existing Ordinance, bracket it all out, and replace it with Draft 4 underscored. What I have prepared for you is this document which shows the difference between what was passed by the Council in Committee, which became Draft 4, and the existing Ordinance so that you could see the differences. This would basically be a cleaned up version of this. We were waiting to see what was going to happen with the Bill today because I knew that there were going to be some amendments or there were some proposed amendments that were going to be floated, but we need some time just to finalize this now that we know that there are not going to be any amendments. I would ask you indulgence in preparing a final floor amendment for your consideration.

Councilmember Chock: Peter, do you need more time to create that?

Mr. Morimoto: It is pretty much done. We just need to put the name of the member introducing the floor amendment and the fact that it is Draft 4 that is being amended.

Councilmember Chock: Again, you need more time to complete it?

Mr. Morimoto: Yes.

Councilmember Chock: What I would like to do since we have not all spoken, I myself, would like to allow you the time to do that. If we need to, we are going to have to come back, but I only want to come back to a vote. If that satisfies everyone and no more questions on what is going to be presented as a final draft of what we discussed over the last few years. With that, thank you, Peter. We will let you do that.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: I would like to reserve my right to speak last as the Chairman.

Councilmember Chock: Okay, sure. I will go then. First of all, I really wanted to thank everyone. It has been a long, long journey on this item. Years in the making. I want to thank the people who have put so much time and effort in it. I know that they have tried to be as fair as possible and have tried to give as much as possible in order to come to the outcome that we are currently at today. As you can see as it came to the Council, it was still not –there were some key areas that we were not able to get to from the Committee and even as you look around at this Council where we all stand today, we still have those same issues. For me, it is hard for me to separate some of the things that are being said scientifically. While I do not disagree what rocky shorelines are, I understand what a rocky shoreline is. I pick *‘opihi* and I know what a rocky shoreline is. The truth is, there is a reason why people do not rock climb in Hawai‘i, because they cannot. The truth is that when you mitigate any part of any shoreline or any side of a mountain or any hill, we suffer major consequences as we have seen in the past. We know that there is mix grade in here and I am not convinced that we have really mitigated this well. We have not looked at all of the rocky shorelines. That is the problem. We do not know all of them. We have not documented them well. We do not know how to move forward on them well yet. That is why I am not as completely supportive of this measure moving



forward. I think there is more work to be done here and that is why I was looking for something that was keeping us on the safer path until we can get that work done. That is why I am supportive of what we tried to put together in removing the exemptions. I value the work, again, that has come forth; however, I do not think I will be supporting this after all of this work at this time. Thank you.

Council Chair Furfaro: Am I the last speaker?

Councilmember Chock: Yes.

Council Chair Furfaro: Thank you. I do want to make it very clear what my mission has with been my time on the Council and my time at the Planning Commission. I think some of the things that I said earlier about view planes and the approach used like earth tones and landscaping and so forth, those are all real possibilities here. My focus, and you can check my record, has always been about reducing density. That is where I am coming from. There is a meeting, Tuesday, at the Planning Department, and I will be visiting with Sam Lee again that the General Plan wants to expand the Visitor Destination Area (VDA) in Po'ipū. I have already given testimony once, I will be there to give it again. I think we have a situation where there are two thousand eight hundred (2,800) designated visitor units on the island and the way you approach it is you review the project, you see where you can take back density, and you have to do it project by project. That is how we do it. If not, we will find ourselves in litigation and a taking. Please, check my record on that from, the Sheraton Princeville by getting back fifty (50) rooms to Kiahuna in getting back one thousand five hundred (1,500) units. That is an issue for us. I had a meeting with Vice Chair Chock the other day and one of my concerns with this Bill is I pointed out almost forty-seven (47) *kuleana* that are within the Ko'olau area out to Hā'ena that are all within the one hundred (100) foot setback, and that raises up questions for me as well. Now, where do we go with this Bill and how do we address those families that have *kuleana* right along the shoreline? There are lots like that in Wainiha, Hā'ena, Ko'olau, Waikalua, and I am hoping in a response I got from the attorneys, is those pieces will be handled by DLNR and they will not be affected by this Bill.

I want to thank everybody that has been working on this for almost two (2) years. The first Bill we passed was in 2007 and we passed another Bill in 2010. It has been a long process these last two (2) years, but I will be there Tuesday giving testimony about not expanding the VDA area in Po'ipū. I think the key to the whole thing, as I have mentioned in a couple Resolutions today, is we have to find a way to negotiate back density. To me, that has a priority. Carl, I am sorry you do not agree with me. Carl, I am speaking to you, but you have heard this from me directly. Maka'ala has heard this from me directly. I have tried to communicate to you, but that is my priority in what I see as getting back some of that density. On that note, I am finished with what I had to say.

Councilmember Chock: Thank you. We are not ready. I think if we could move to the next item.

Councilmember Kagawa: Chair.

Council Chair Furfaro: I am really dragging here. I was supposed to leave at 4:30 p.m. to get my wife.

Councilmember Kagawa: I mean, Chair has his wife he needs to tend to. I think that is priority, but obviously, if you just do quick math, we are 3:3 if he leaves. Is there any way to speed Peter up and just let us get, at least this issue done with or

else let us just defer it? I am totally fine if we defer it, we educate the new Council, but let us be considerate to our Chair. I do not know why we drag our meetings so long in the first place, but it is what it is.

Councilmember Chock: Let me ask first. Oh, it looks like it is ready.  
Let us get this passed out.

Councilmember Kagawa: Move to amend as circulated. Oh, it is  
JoAnn's.

Councilmember Chock: Motion?

Councilmember Kagawa: Move to amend as circulated. Oh, it is you  
that needs to do that.

Councilmember Yukimura: Do we withdraw the motion that was on?

Councilmember Kagawa: No. I believe...

Councilmember Chock: There was not a motion.

Councilmember Yukimura: There was no motion. There was a motion to  
amend the language.

Councilmember Rapozo: To amend?

Councilmember Yukimura: We could not have moved to amend as  
circulated without a motion.

Councilmember Chock: That is right.

Councilmember Rapozo: Yes, but the motion failed.

Councilmember Chock: This is a new amendment.

Councilmember Rapozo: Right.

Councilmember Chock: This is a new one.

Councilmember Yukimura: We had a main motion and so this is now...

Councilmember Bynum: A new amendment.

Councilmember Yukimura: A new amendment. I see.

Councilmember Chock: Just make the motion.

Councilmember Yukimura moved to amend Bill No. 2461, Draft 4, as  
circulated, as shown in the Floor Amendment, which is attached hereto and  
incorporated herein as Attachment 2, seconded by Councilmember Kagawa.

Councilmember Chock: Great. Any discussion on this? Hold on.  
Public testimony?

Councilmember Yukimura: No need.

Council Chair Furfaro: No need for public testimony.

Councilmember Chock: Yes, that is right. Alright, we will go with a roll call on this then.

Ms. Fountain-Tanigawa: This is on the amendment.

The motion to amend Bill No. 2461, Draft 4, as circulated, as shown in the Floor Amendment, which is attached hereto and incorporated herein as Attachment 2 was then put, and failed by the following vote:

FOR AMENDMENT:	Chock, Hooser	TOTAL – 2,
AGAINST AMENDMENT:	Bynum, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 5,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 5:2.

Councilmember Chock: 5:2. Motion passes. Great. Main motion.  
We need a...

Council Chair Furfaro: As amended.

Councilmember Chock: As amended.

Ms. Fountain-Tanigawa: Roll call?

Councilmember Chock: Roll call.

The motion for adoption of Bill No. 2461, Draft 4, as amended to Bill No. 2461, Draft 5, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 4,
AGAINST ADOPTION:	Bynum, Chock, Hooser	TOTAL – 3,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Councilmember Chock: 4:3. Motion passes, right? Thank you.  
Everybody, next item. Oh...

Council Chair Furfaro: I have to be excused.

Councilmember Chock: Do we want to go to the Agronomics / Agricultural Use Definition / Reporting Bill next? Right now, Chair Furfaro will be leaving. Actually, he has made a request to leave. We will just take a short three (3) minute recess at this time to say our good-byes.

There being no objections, the meeting recessed at 5:08 p.m.

The meeting reconvened at 5:12 p.m., and proceeded as follows:

*(Council Chair Furfaro was noted as excused.)*  
*(Councilmember Bynum was noted as not present.)*

Councilmember Chock: Aloha and welcome back from our break. At this time, we will...County Clerk.

Ms. Fountain-Tanigawa: Vice Chair, this brings us to page 6, Bill No. 2561.

There being no objections, Bill No. 2561 was taken out of order.

Bill No. 2561 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Office of the County Attorney, Special Counsel Account - \$67,933*): Councilmember Rapozo moved for adoption of Bill No. 2561 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Councilmember Chock: Great. Any questions for Mauna Kea? If not, anyone would like to testify on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Oh, we are on Bill No. 2561. This is for Special Counsel, sixty-seven thousand nine hundred thirty-three dollars (\$67,933).

Councilmember Yukimura: Oh, okay.

Councilmember Chock: Any discussion on this item, members? No? Seeing none, this is a Bill for second reading. Can we have a roll call on it?

The motion for adoption of Bill No. 2561 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura	TOTAL – 6*
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauai, Councilmember Bynum was noted as silent (not present), but shall be recorded as an affirmative for the motion.)

Ms. Fountain-Tanigawa: Five (5) ayes.

Councilmember Chock: Five (5) ayes. Motion passes. Next item.

Ms. Fountain-Tanigawa: The next item is Bill No. 2559, Draft 2.

Bill No. 2559, Draft 2 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Tax On Use*)

Ms. Fountain-Tanigawa: The Committee recommended that this be Received for the Record.

Councilmember Yukimura moved to Receive Bill No. 2559, Draft 2 for the Record on second and final reading, seconded by Councilmember Kagawa.

Councilmember Chock: Any questions? Anyone would like to testify on this item, this tax bill?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Further discussion members? Seeing none, roll call.

The motion to Receive Bill No. 2559, Draft 2 for the Record on second and final reading was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Kagawa, Rapozo,	
	Yukimura	TOTAL – 5,
AGAINST ADOPTION:	Hooser	TOTAL – 1,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Bynum was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Ms. Fountain-Tanigawa: Four (4) ayes.

Councilmember Chock: Four (4) ayes. Motion passes. Next item.

Bill No. 2557, Draft 2 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Low Income Tax Credit*): Councilmember Yukimura moved for adoption of Bill No. 2557, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Rapozo.

Councilmember Chock: Thank you.

*(Councilmember Bynum was noted as present.)*

Councilmember Chock: I believe there is an amendment...

Councilmember Yukimura: Yes.

Councilmember Chock: ...to be introduced.

Councilmember Yukimura: Yes.

Councilmember Yukimura moved to amend Bill No. 2557, Draft 2, as circulated, as shown in the Floor Amendment, which is attached hereto and incorporated herein as Attachment 3, seconded by Councilmember Hooser.

Councilmember Chock: Thank you. Councilmember Yukimura.

Councilmember Yukimura: Yes. This is a request by –is Steve here? Yes, Finance, but it is something I totally support because we want “household income” to mean the total gross income of all persons residing on the property, not the titleholder’s because in the case of a life estate, if the titleholder include the remainder, those who are not living on the land, but will inherit the property. That has actually prevented people from qualifying for low income even though the people who are living on the property have a low income. The remainder or the income of the remainder or those who would inherit the property when it is counted, it does not reflect the true circumstances.

Councilmember Chock: Okay. Thank you.

Councilmember Yukimura: Of the occupant. Any questions?  
Councilmember Kagawa.

Councilmember Kagawa: I just have a question for the Finance Director.

Councilmember Chock: Okay. We will suspend the rules. Director of Finance.

There being on objections, the rules were suspended.

Councilmember Chock: Thank you, Steve.

Councilmember Kagawa: Thank you, Chair. Steve, have you seen the amendment, and what is your feelings on the amendment? Is it an amendment that can be implemented by the Finance Department?

STEVEN A. HUNT, Director of Finance: Steve Hunt, Director of Finance for the record. Yes, this is actually a suggestion both by our staff at Real Property Assessment and concurrence from me to make sure that we are giving those that are living on property, the opportunity and those especially with the very lowest means of income, fifty percent (50%) of the median income or below the opportunity to pay an in-lieu of tax that would benefit them.

Councilmember Kagawa: Does this, I guess, create confusion with say an owner who does not live on the property, is renting out to tenants who qualify for this? I mean, is it not the owner who is the one that pays the property taxes?

Mr. Hunt: In the case where it would require that there would be an owner-occupant. In the case of a tenant, unless they were exercised under a fifteen (15) year lease and met the qualifications as an owner for the purpose of taxation and that their income was below the fifty percent (50%) median income, which I believe is thirty-five thousand one hundred dollars (\$35,100) for this year. That is pretty stringent requirements to meet. If the tenants were very modest in income as well, then they would potentially be able to qualify.

Councilmember Kagawa: For the owners?

Mr. Hunt: As the owner, if they had a fifteen (15) year lease in place, that is correct.

Councilmember Kagawa: Oh, okay, only if you have that fifteen (15) years?

Mr. Hunt: Only if they had the fifteen (15) year lease and recorded it at the Bureau of Conveyances.

Councilmember Kagawa: Than you. Thank you, Chair.

Councilmember Chock: Thank you. Further questions?

Councilmember Hooser: Just a brief follow-up. If the homeowners are renting out a room, that person is residing on the property. So, that person's income would be counted on this?

Mr. Hunt: The rental income from the tenant, if you will, living on the property would be included in the gross income for the applicant.

Councilmember Hooser: But the tenant who is a person residing on the property, their income would not be?

Mr. Hunt: Compliance would be very difficult. What we would be looking at is the applicant and hope that we would have disclosure as to all household income.

Councilmember Hooser: The tax office would use its discretion on interpreting the law, who was there, and decide what income to include and what not to include?

Mr. Hunt: Ideally, we did not limit this to Homestead only because they could have another rental on the property separate from the main house. It gets a little grayer when you are renting a room and we do not have Ordinance language to deal with that, that would say, "That is an owner-occupant" because they are not an owner.

Councilmember Hooser: The tax office would use its discretion in interpreting the law and determining whose income to include and whose not to include?

Mr. Hunt: Yes, we would probably have to address this in the Administrative Rules.

Councilmember Hooser: Okay. Thank you. I think this is a long-term issue that needs to be worked out. I think there are lots separate from this Bill. Thank you.

Councilmember Chock: Mr. Bynum.

Councilmember Bynum: Is this language consistent with how we assess it for other tax—I forgot the other one.

Mr. Hunt: Well, we actually have three (3) programs. We have the Home Preservation Limit which actually is, we do one with all titleholder because the income threshold is much higher at one hundred thousand dollars (\$100,000).

Councilmember Bynum: Right.

Mr. Hunt: Then we have the Loan Income exemption which is actually an exemption from value which is household income. This would be consistent with the exemption.

Councilmember Bynum: And the language is consistent?

Mr. Hunt: Yes.

Councilmember Bynum: Okay. Are there instances other than living trust where this would be problematic if we left it with titleholder?

Mr. Hunt: There are other instances. I know we do not give exemptions to partnerships. If you have a family living in partnership for estate planning, then that would not be eligible because it is a partnership and not an individual.

Councilmember Bynum: I mean, the purpose of this, I totally support. There could be unintended consequences of circumstances where maybe they are taking care of an adult child who just does not function well, but it is wealthy people somewhere else, right? It could have problems if you go the other way too. I agree with Councilmember Hooser. I am going to support this because it is clear, the intent, but we may want to look at this closer in the future. Thank you.

Councilmember Chock: Councilmember Rapozo.

Councilmember Rapozo: Thank you. Steve, if one (1) owner, there is a titleholder or an owner of the property that does not live on the property, his income does not get...

Mr. Hunt: Under this amendment, that would be correct.

Councilmember Rapozo: You could have a millionaire living on the Mainland or living in another home and they would qualify? They could qualify if let us say they had a son living in that house?

Mr. Hunt: It does require that you have an ownership interest because you have to have the home exemption.

Councilmember Rapozo: Right. He adds his son to the title.

Mr. Hunt: He adds his son to the title, the son applies for a home exemption, the son gets the home exemption, and then we use the son's income because he is the only one residing in the property.

Councilmember Rapozo: The son is a full-time college student or whatever so dad supports son, but dad is going to get this benefit? That, I cannot support. Thank you.

Councilmember Chock: Any other questions? Councilmember Bynum.

Councilmember Bynum: Just to follow-up because that is a scenario I was thinking. I have seen a lot of it. Wealthy people that have an adult child who maybe is just a flake, but they are still supporting them on the other side of that. That is why I ask the question, "Is it other than the living trust?" Maybe we do it that way more affirmative to say, "If you are a living trust, this does not apply." It is



just a thought. I am kind of concerned about what Mr. Rapozo is saying. If I personally know of several circumstances like that in this world, there is probably a lot more. I do not know.

Councilmember Chock:

Councilmember Yukimura.

Councilmember Yukimura: This also addresses the situation of an elderly senior who has lived for most of her life in Po'ipū, she has a very low income, and her property values are through the roof. She also qualified for the Home Preservation or did not qualify?

Mr. Hunt:

Did not qualify in that case.

Councilmember Yukimura:

What was the...

Mr. Hunt: Because her net taxable value was below the threshold because she did have an age exemption and an income exemption, which knocked down the gross assessed value to net assessed value below the seven hundred fifty thousand dollars (\$750,000) to qualify under the Home Preservation limit.

Councilmember Yukimura: some tax relief?

This would be the only way she would get

Mr. Hunt:

Under that scenario, yes.

Councilmember Yukimura: bathwater.

I do not want that throw the baby out with the

Mr. Hunt: Just thinking out loud, another way that you could look at that would be you could have a threshold for the owner-occupants, but also have a higher threshold for all titleholders and look at both. If the titleholder income in aggregate exceeds a much higher number, not the fifty percent (50%) number, but the household income, it makes the criteria. You could have a two-prong test, if you will, that they qualify for the people that are living on property, but then when we look at all titleholders, if their income exceeds, and this is just an arbitrary number one hundred thousand dollars (\$100,000) in gross income for all titleholders, then they are not eligible. That still would be when you are deeding interest to you kids, your kids are working, and may have mortgages of their own to pay, their gross income may be high. There is not going to be a silver boat.

Councilmember Yukimura: If we limited it to owner-occupants, then the senior in Kōloa/Po'ipū would be okay. The problem comes up when you are not limiting it the owner-occupant. This is now –it is an owner-occupant, but there are other owners. Is that how it goes?

Mr. Hunt: The concern would be when there are multiple titleholders in for adverse people who want to get the greatest benefit if they deed a small portion of their property to a relative of meager means, but the other majority owner has resources to pay their taxes. They could get out of paying it by establishing the home exemption for that one individual who does reside on property.

Councilmember Yukimura: That seems funny that might be done. I am sorry. Sometimes children become joint homeowners with their parents to avoid probate and those complications. We do not seem to have a trouble with then allowing a senior to get a low income tax because the income seems very genuine, but we have a problem with an adult kid who, I guess, our judgment is that person should be

making some higher income or something, huh? I mean, that is the concern, right? Thank you.

Councilmember Chock: Councilmember Hooser.

Councilmember Hooser: I suggest we send this back to Committee for more work.

Councilmember Chock: Okay. I think that is a great idea. It seems like it is worth continuing conversations, certainly the intent is there, but we need to work out some details here.

Councilmember Hooser: I do not want to cut off debate, but we could make a motion when you are ready.

Councilmember Chock: Okay. Let us just finish this here.

Mr. Hunt: Just from a pure timing standpoint. If you want this to be effective for the 2015 year, it pretty much needs to pass.

Councilmember Yukimura: Today?

Mr. Hunt: We actually have a letter drafted that says, "Pending legislation" because we did not know the outcome of today that is going to go out in Friday's mail to all of our homeowners, actually all of our taxpayers, about tax relief programs and we wanted to include this. If we are going to amend it then send it back to Committee, it would not be available for the 2015 year. So, we would have another year without this relief if you okay with that.

Councilmember Chock: Councilmember Bynum,

Councilmember Bynum: Sorry. I kind of heard that. I did not heard the end of what you said, but here is some time pressure on this, is there not?

Mr. Hunt: Yes.

Councilmember Yukimura: A lot.

Mr. Hunt: This Friday, we are sending out our assessment list and including the letter and we would not be able to implement this for 2015 if that was the case.

Councilmember Bynum: I love this Bill.

Councilmember Yukimura: Me too.

Councilmember Bynum: I mean, I want it to pass. What if it said, the language would say, "Gross income of all persons residing on the property for (inaudible)." Just like it says. "Additionally, the gross income of all titleholders cannot exceed one hundred fifty percent (150%) of Kaua'i median income." Would that not solve it right there? Could we not do that today?

Mr. Hunt: You could do whatever you would like today. The concern would be if the children are on titles. I think the classic case is going to be the remainderman and the life estate.

Councilmember Bynum: Right.

Mr. Hunt: Where you have a life estate and they are the ones that are probably on the low income. For estate planning purpose, they have essentially titled the property to their children and their children may be working, and together have, especially if it is multiple children, they have families and whoever is on title, we are going to be collecting all of their gross income. Anybody, if it is two (2) or three (3) kids and they are all making fifty thousand dollars (\$50,000), sixty thousand dollars (\$60,000) gross income because they have to support their own families. I mean, they are not going to hit that.

Councilmember Bynum: One hundred fifty percent (150%) of median income is what? One hundred ten thousand dollars (\$110,000) or something like that, right? I mean, yes, your parents are over there on Kaua'i, they are low income, and they get this low income credit unless you make more than one hundred ten thousand dollars (\$110,000) a year, in that case, you need to have some responsibility for your elderly parents. I am just thinking out loud.

Mr. Hunt: I am supportive of the measure to move this through because, I think, although there could be some abuse, I think the greater good is there are so many people that could benefit from this and this is really, that relief mechanism that we used to have that puts the income as one of the criteria rather than the property value for those that cannot pay.

Councilmember Bynum: Then, I will just wrap this up. For me personally, I could pass this amendment as it is because I want this for next year. I think you want it and it is the right thing to do. I would encourage the future Council to look at this issue again because I think there will be some abuse, but what you just said is true. The benefits will probably way outweigh that. I am okay with this for now and I will not be here to deal with the future issues, but I hope the rest of you do. Thank you.

Councilmember Chock: Councilmember Hooser and then Councilmember Yukimura.

Councilmember Hooser: Just real quick. I believe we passed measures that have retroactive tax credits. So, we could conceivably, pass this in a week or two (2), if we miss all of the deadlines, still have it apply to this year. Is that possible?

Mr. Hunt: We would be doing it during budget without a certified role because we do not know what the financial impact would be. It would have to be an amendment to the budget or part of the budget process, and we would be doing that concurrently and taking applications to determine what the revised assessment list would be that we are providing you for the budget. It would be very complicated and somewhat inaccurate maybe. I do not know.

Councilmember Hooser: No, I am done.

Councilmember Chock: You are done? Okay. Thank you.  
Councilmember Yukimura.

Councilmember Yukimura: I would like to suggest, I want to see this pass. I mean, these are the taxpayers we need to think about, these lower income, especially seniors. If we want to just defer it, I will work on an amendment and we will see how it works and then if we need to make alterations next year, we can, but I will work

on an amendment akin to what Councilmember Bynum is suggestions that puts some limits on the gross income of all titleholders.

Councilmember Chock: Your interest is passing it?

Councilmember Yukimura: Yes, and I am willing to work on an amendment that would address, at least in part, the concern about abuse.

Councilmember Chock: Okay. Any further discussion or questions here for the Director of Finance. We will take public testimony. Thank you. Would anyone like to testify on this item? Ms. Punohu.

Ms. Punohu: Here is what I heard. I heard potential for abuse. Huge red flag for me. I heard millionaires with trust fund babies can get low income tax exemptions for them. That is what I heard. I agree with Mel. I agree with Bynum. I just want to say in general, when you folks create things, you have to think of everything first before you pass the Bill. Now we are hearing "timeline, timeline, have to get it passed, have to get it passed, quick, quick, quick, hurry up, hurry up, let us get this going for 2015." Great, and then do amendments after you passed the Bill today. Wrong. We get into so much trouble when we do that okay? You have to stop. I am sorry, but you have to stop doing that. What you need to do is have your ducks in a row and have everything done before you come to the table and put something forward. This to me, if anyone else is watching this is going, oh hell no. What? Rich people is going to have their kids and they are getting all of these exemptions? What? It is not going to do what JoAnn wants to do, which is help the little poor *kupuna* who is sitting there who needs this help. Tim, you have to lower these income guidelines. They are too high already and I testified on that zillions of times when you talked about affordable housing which is not affordable because you have people who are millionaires who can qualify for affordable housing, which hurts everybody else who really needs the affordable housing. I just see this as a big mess waiting to happen in the future. Please, please, please think carefully today about what you are doing because you are creating a mess for the future. Thank you. *Mahalo*.

Councilmember Yukimura: I have a question.

Councilmember Chock: Question.

Councilmember Yukimura: Anne.

Ms. Punohu: Yes.

Councilmember Yukimura: Because I do not think in our County Housing program there are millionaires who are taking up County housing. If there is a case, please let us know.

Ms. Punohu: When I have testified in front of this Council for many years about public housing, it has been one of my big huge concerns, and you know that JoAnn, personally. My biggest...

Councilmember Yukimura: I am asking you to please submit information.

Ms. Punohu: My biggest complaint has been that you folks make the limits high on your income levels, and you make them higher and higher and higher all of the time of who can qualify. Yes, if I found that out, I would come to you and tell you. You can guarantee that.

Councilmember Chock:                      Anyone else would like testify on this item?

There being no further public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock:                      Further discussion? I would just like to say, I do not know if we can get all of this work done that we want to in time. That is where I am. While I support where this is going, I mean, already we have asked for it to be referred to the Committee for future work. I do agree that we do not want to pass something that there are some uncertainty about. I want it to work. It is just not quite there for me yet. Councilmember Rapozo.

Councilmember Rapozo:                      Well, I agree with Vice Chair Chock and I definitely agree with Anne, that we are here today because of moving quickly with good intentions, but just when I cannot get the impact, when there are the amount of unknowns that we have had in our tax bills, it is difficult for me to support. I did support it out of the Committee because I did want to give it a shot with the full Council and I simply cannot. It is not ready for me. I will not be supporting it. People are going to take advantage of what is provided for them. That is not being a crook. If this Bill or if the amendment passes, it provides that avenue for a wealthy person to take advantage of a law that is legal and get away from paying tax. Who would not? We do not know. It is a small number. We do not know that. We do not know any of that. It is very difficult for me to support that. I will not be supporting the amendment or the Bill. Thank you.

Councilmember Chock:                      Thank you. Councilmember Yukimura.

Councilmember Yukimura:                      I do not think it takes that much to amend, and if this amendment can prevent abuse while making tax relief available for our elderly citizens, I think we need to work on it a few minutes. If it is so terrible, we can change it, but I do not think we will find that to be true.

Councilmember Bynum:                      This is a really important Bill that we should pass either by accepting this amendment and JoAnn's commitment to look at it further or reject this amendment and pass the Bill. Then we will know there will be no abuse next year, and then you can work on...

Councilmember Yukimura:                      That is true.

Councilmember Bynum:                      Because this week, there are people on Kaua'i who need this next year. I would suggest perhaps we do not pass the amendment, but pass the Bill and then fix it rather than wait for abuse and then fix it. Make sure there is no abuse and then fix the anomalies later. For my two cents (\$0.02), I want to vote on this Bill today either with the amendment or without.

Councilmember Chock:                      Thank you. The other suggestion from Council Services, we do have the other Bill that we have to work through. If there is a willingness for Councilmember Yukimura to work on it, then we can do that, get that working while we move to the Agronomics / Agricultural Use Definition / Reporting Bill. That was entertained. I will pass it on to Councilmember Hooser.

Councilmember Hooser:                      I think we should move onto the Agronomics / Agricultural Use Definition / Reporting Bill, and then if they want to work on amendment --is that what the suggestion is? Let us to that. Let us get to the Agronomics / Agricultural Use Definition / Reporting Bill.

Councilmember Rapozo: We have a pending amendment on the floor.

Councilmember Chock: That is right.

Councilmember Rapozo: We should take the vote and move on.

Councilmember Chock: Okay.

Councilmember Rapozo: Or like you said, if not, then send it back to the Committee.

Councilmember Yukimura: We have moved things to the end of the agenda or to the next item before. That is not a...

Councilmember Rapozo: Yes, okay, whatever. I just do not want to prolong the inevitable. If there are no votes, let us do it now. No sense go through hours and hours of work with our staff to end up with a Bill that is not going to pass. That is, I guess, what I am trying to suggest.

Councilmember Hooser: It is clear we do not have the votes.

Councilmember Rapozo: Right.

Councilmember Hooser: It is either defer to next Committee or to the next Council Meeting. That is clear. There six (6) people here, three (3) at least, if not four (4), have said that they are concerned about it and are not prepared to pass it. I agree, it has to be deferred.

Councilmember Yukimura: I would like to suggest what Tim says. We just not pass the amendment, which will still then mean that all titleholder's incomes are considered and people like Betty in Po'ipū will be able to qualify because she is the sole owner. What we will do by not passing the amendment is we will not give this loop hole for abuse, is what we will do, and we will at least establish it for low income seniors.

Councilmember Hooser: I will call for the question on the amendment.

Councilmember Rapozo: Second.

Councilmember Yukimura: Thank you.

Councilmember Chock: On the amendment?

Councilmember Hooser: On the amendment.

Councilmember Yukimura: Yes.

Councilmember Chock: Roll call.

The motion to amend Bill No. 2557, Draft 2, as circulated, as shown in the Floor Amendment, which is attached hereto and incorporated herein as Attachment 3 was then put, and failed by the following vote:

FOR AMENDMENT:	None	TOTAL – 0,
AGAINST AMENDMENT:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura	TOTAL – 6,

EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Councilmember Chock: The amendment fails.

Councilmember Yukimura: So, the...

Councilmember Rapozo: Call the question on the main motion.

Councilmember Bynum: Call the question. Second.

Councilmember Chock: Thank you.

Councilmember Yukimura: No, you...did you...

Councilmember Chock: Second right here. We got it.

The motion for adoption of Bill No. 2557, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Yukimura	TOTAL – 4,
AGAINST ADOPTION:	Kagawa, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Councilmember Chock: Okay. Motion passes.

Councilmember Rapozo: I tell you, we saved four (4) hours of pain.

Councilmember Chock: Next item.

Ms. Fountain-Tanigawa: The next item is Bill No. 2546, Draft 2.

Bill No. 2546, Draft 2 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Agronomics / Agricultural Use Definition / Reporting*): Councilmember Bynum moved for adoption of Bill No. 2546, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Hooser.

Councilmember Chock: We have a motion and a second.

Councilmember Yukimura: May I?

Councilmember Chock: You have an amendment?

Councilmember Yukimura moved to amend Bill No. 2546, Draft 2, as circulated, as shown in the Floor Amendment, which is attached hereto and incorporated herein as Attachment 4, seconded by Councilmember Bynum.

Councilmember Hooser: Call the question. No, just joking.

Councilmember Chock: Councilmember Yukimura.

Councilmember Yukimura: Let us see. Ashely, where is that Section. Oh, okay. We had to repeat the whole Section called "dedications of land." The meat of the amendment is on page 7. What this amendment does is rather than create another tax class for biotech agriculture, this keeps biotech agriculture within the arena of agricultural dedication, but it creates a category of valuation for biotech based on the reality of the lease rents, and it will be an average because it will be like the figure for diversified agriculture and for pasture. It will be just one (1) established figure per acre value. What this mean is that there will be no selecting out of biotech agriculture for a special tax rate. It will remain the agricultural tax rate, but the valuation will change, but it will be based on conventional systems of valuation and on actual lease rents. Perhaps we can have our Finance Director to explain further.

Councilmember Chock: We have further questions. Actually, if we could call Mona and Steve up at the same time, I would appreciate it.

There being no objections, the rules were suspended.

Councilmember Chock: Councilmember Yukimura, you still have the floor.

Councilmember Yukimura: That is pretty much my explanation. Steve would be better than I in explaining the valuation process.

Councilmember Rapozo: Mr. Chair, if I may.

Councilmember Chock: Okay.

Councilmember Rapozo: I have a legal question because I think if the legal question...

Councilmember Chock: Supersedes it?

Councilmember Rapozo: Yes. Then, it is like fruit off of the poisonous tree. If the legal question is, if what I believe is accurate or true, then nothing else will matter. If I could ask that.

Councilmember Chock: Please.

Councilmember Rapozo: If you do not mind, Councilmember Yukimura.

Councilmember Yukimura: Fine.

Councilmember Rapozo: Being that we are an *ad valorem* tax system and that we that we look at assessment and we look at appraisals of property, what would be the nexus? How could we justify, and I just saw this amendment right now. Unfortunately, I did not have an opportunity to provide this question beforehand. I just saw it right now, but I am reading that and thinking, how do we tie in tax assessment to a lease rent, that value of a lease rental? Do we do that in any other category?

Ms. Clark: Mona Clark, Deputy County Attorney. I think it is an appraisal practice that is used frequently. It is not an unusual technique to be using.

Councilmember Rapozo: It is not an unusual...



Ms. Clark: It is not something that the County has previously used, but in evaluating property values, I think it has been used.

Councilmember Rapozo: Here in our County? Maybe that is for you, Steve.

Mr. Hunt: Steve Hunt, Director of Finance for the record. In *ad valorem* taxation, we have not used capitalized lease rents for value, but as an independent fee appraiser, we look at...

Councilmember Rapozo: We are not talking about independent fee appraiser.

Mr. Hunt: Correct.

Councilmember Rapozo: We are talking about the County of Kaua'i who is governed by a Charter.

Mr. Hunt: Correct. Actually, it is not Charter, but by Ordinance, we do have two (2) techniques that are recognizes which is what they call a market approach which is in today's terminology, the "sales comparison approach and the cost approach" which is the reproduction cost of land plus the cost of the improvements less depreciation. Those are the two (2) recognized approaches for *ad valorem*. Some jurisdictions do you the income approach.

Councilmember Rapozo: Okay.

Mr. Hunt: We do not currently have that in our Ordinance. This would be heading down those lines in terms of income.

Councilmember Rapozo: Is the plan to use that type of assessment for Kukui Grove Shopping Center for all of the other commercial properties?

Mr. Hunt: We do not use the income approach for that; however, in Tax Court, we do have to defend against it because most of the appellants will come at us with the approach because it is fair game, if you will, when we get to appeals.

Councilmember Rapozo: Okay. This would be the first time we have ever attempted to utilize lease rents in assessments?

Mr. Hunt: In all honestly, I think they have used them in the past for some of the State leases in determining what the valuation is.

Councilmember Rapozo: The County has?

Mr. Hunt: Yes. Prior to my...

Councilmember Rapozo: Yes, okay.

Mr. Hunt: But I am saying it has been used in the past to determine the value of lease lands for taxation when they go out of State and become taxable to individuals.

Councilmember Rapozo: Okay. Thank you.

Councilmember Yukimura: In terms of the category of dedicated agriculture, that has not followed an *ad valorem* system per say because that is where the subsidy has been, right?

Mr. Hunt: Yes, and...

Councilmember Yukimura: I mean...

Mr. Hunt: ...to that point, for agriculture valuation, which is not market valuation.

Councilmember Yukimura: Right.

Mr. Hunt: But rather market value as in agriculture's specific use, there have been studies that have been relief upon which are income based and it determines what the ability of a farmer is to pay for land. That is capitalized to come up with a price per acre in agriculture production.

Councilmember Yukimura: I guess a question for both you and Mona from different standpoints would be, would the system of referring to lease rents be defensible in court as a legitimate way of establishing value?

Ms. Clark: I would say that as you are getting a subsidized rate and it would be capped by this amendment at the fair market value, that you probably could support it because you are giving a discount off the standard value of it.

Councilmember Yukimura: Steve, do you have anything to add?

Mr. Hunt: As far as defensible in court, again, I do not know. We are definitely somewhat on new grounds, but the fact that we are using pasture lands and diversified land values that are based on a similar approach, we would essentially be analyzing the lease to see how far they relate to that same approach.

Councilmember Yukimura: Moving from the legal to the valuation process, in your judgment, and I know you have not gone through all of the process that you would need to this sort of base value, but I think you have done some estimates. Based on the figures you have given me, I think there may be a five hundred dollars (\$500,000) give or take, increase to seventeen thousand (17,000) acres, fifteen thousand (15,000) acres?

Mr. Hunt: In that estimate, we were looking at if those properties that were receiving dedicated values under the current dedication were to go to market value, I believe, the increase and actually the estimate is much higher now. I think it is about seven hundred fifteen thousand dollars (\$715,000).

Councilmember Yukimura: It is seven hundred fifteen thousand dollars (\$715,000)...

Mr. Hunt: To go from agriculture dedicated value tax to a market value tax for those same sets of properties that were analyzed.

Councilmember Yukimura: This agriculture valuation approach that we are talking about based on lease rents would be somewhere in between the diversified and the market?

Mr. Hunt: Well, it would have to be because if they are above market. If the determined, I guess, value benchmark for this biotech was something that was higher than market value, then there would be no benefit to the dedication and they would be paying market at that point.

Councilmember Yukimura: When I calculated five hundred thousand dollars (\$500,000) for fifteen thousand (15,000) acres, that was like about thirty-three dollars (\$33) per acre in valuation additional. Then of course the tax rate would be times one thousand dollars (\$1,000) valuation for each one thousand (1,000). It is not that big of an impact.

Mr. Hunt: I would not be able to speculate until we decide what that valuation rate will be for that.

Councilmember Yukimura: Okay.

Mr. Hunt: It depends where the properties are located. They have different market values depending on their size and their underlying density. It is really the comparison to the market value to determine what the potential savings are.

Councilmember Yukimura: But the value would be based on an agricultural use, not on a development scenario?

Mr. Hunt: It would still be eligible for dedication. It would just be a different valuation rate for that. That is correct,

Councilmember Yukimura: Thank you.

Councilmember Chock: Councilmember Bynum.

Councilmember Bynum: I do not want to make statements when it is question and answer time. Well, I will turn it into questions. What you gave us before was that the total fiscal impact of this tax incentive that we give is for agricultural dedication is eight million five hundred thousand dollars (\$8,500,000), roughly, yes?

Mr. Hunt: Roughly, yes.

Councilmember Bynum: The portion that is attributable to the seed companies, in essence, is around seven hundred fifty thousand dollars (\$750,000), right?

Mr. Hunt: Seven hundred fifteen thousand dollars (\$715,000), I think.

Councilmember Bynum: Right, but over two hundred fifty thousand dollars (\$250,000) of that is on one (1) urban parcel. It is unique, correct?

Mr. Hunt: Correct.

Councilmember Bynum: We do not know the exact number because we do not know. It is somewhere between fifteen thousand (15,000) and twenty two thousand (22,000) acres, and that vast land, those bigger parcels, the fiscal impacts is roughly five hundred thousand dollars (\$500,000), correct?

Mr. Hunt: Little less if it is two hundred fifty thousand dollars (\$250).

Councilmember Bynum: A little less, right, if you remove that. Well, you have answered my questions, and I will make comments about putting that into perspective.

Mr. Hunt: That is strictly going to market value where they would not have any benefit of a dedicated value.

Councilmember Bynum: Right. I will have other questions, but I want to present a framework of why this makes sense.

Councilmember Chock: Any other questions? No? Okay. I was going to call for public testimony actually first. Thank you. Then we will bring it back. Do we have anyone registered? No?

Mr. Sato: No.

Councilmember Chock: Anyone would like to speak on this item? Yes.  
Mike.

MICHAEL TRESLER: Good evening Council. Michael Tresler, Senior Vice President for Grove Farm Company and entities. First of all, I was pretty alarmed when the analysis was being made about the fiscal impact in looking at the tax implications for seed corn companies as opposed to them being market. One thing we need to consider is that if it would not be in seed corn, then it could simply be in diversified agriculture as it is diversified agriculture or other diversified agriculture or pasture, which would be even less taxes to be paid. To assume that just because you would move those parcels to market that you would gain tax revenues is not true because they could simply decide to give up those parcels and then the dedication would change between that seed corn company and other diversified agriculture or pasture. I think that is an important point to make because I know Mr. Bynum keeps alluding to this whole thing and went over it, about what the real story is regarding the Walmart parcel, as we refer to it. That has always been in agriculture from the day it was rezoned prior to that, and it continues to this day. As evidence, and we provided that evidence to Ms. Clark on that. That was documented by a 2002 lease with Pioneer Company. I mean, it is like we are beating a dead dog about that one (1) parcel. The taxes on that is two hundred eighty thousand dollars (\$280,000) a year, which increased from five thousand dollars (\$5,000) in 2000, I think, to fourteen thousand five hundred dollars (\$14,500) in 2001, to two hundred eighty thousand dollars (\$280,000) in 2008 and the use never changed. Remember there is a law in that Ordinance, and I have a copy of that, in 1996 that clearly states that we shall do agriculture, diversified agriculture, or keep in an orderly manner. There is a law that says, clearly, that you shall do agriculture. That is why we did not have to get a special permit to get an agricultural dedication on that urban zone parcel.

Just generally, we understand again, you are trying to single out the seed corn companies, and I think the public has spoken on that issue pretty clearly. I understand we are in a fiscal pinch coming up for this next budget. We are always in a fiscal pinch, but what concerns me is that we are not looking. We are trying to tap the same taxpayers for more revenues. I think this body going forward, including the Administration, really needs to consider growing an expanding the tax base.

Mr. Sato: Three (3) minutes.

Mr. Tresler: Rather than constantly...

Councilmember Chock: Continue.

Mr. Tresler: ...killing development and so forth to look for new revenues. Agriculture is economic development. Seed corn companies pay good salaries. They are a big economic player on our island. We need to keep that in mind. Another thing I would like to say is that it seems like this attack on Grove Farm Company large landowners, on our leases, the tenants are responsible for taxes. If there are any changes to taxes, it is not going to affect our bottom line. They are going to fund the taxes, our tenants, and the small farmers are going to feel it. That is another thing to keep in mind when we go through this Agronomic / Agricultural Use Definition / Reporting Tax Bill. Thank you.

Councilmember Chock: We have a question over here.

Councilmember Bynum: Thank you for being here, Mr. Tresler. You are familiar with the agriculture dedication laws, right?

Mr. Tresler: A little bit.

Councilmember Bynum: Well, you administered them here at the County of Kaua'i, did you not? You were the Finance Director of the County of Kaua'i?

Mr. Tresler: Yes, I was.

Councilmember Bynum: You were responsible to administer all of these laws, correct?

Mr. Tresler: Yes, and I had very good competent employees.

Councilmember Bynum: Okay.

Mr. Tresler: Administering the law.

Councilmember Bynum: I agree with that. You are aware that there is one (1) rate for diversified agriculture and one (1) rate for pasture, correct?

Mr. Tresler: Correct.

Councilmember Bynum: And that those rates are based on the value of the product produced on that land, correct?

Mr. Tresler: Correct.

Councilmember Bynum: You are aware that the seed companies do not produce a product for sale on their land, most of their operations, correct?

Mr. Tresler: Actually, they do produce a product for sale, and they are considered diversified agriculture.

Councilmember Bynum: Well, then this Bill will not impact them then. You are saying that all of the corn that we see them growing out there is being sold to someone?

Mr. Tresler: Well, it ultimately reaches market. We come back to the argument of what are you growing feed for? If you grow food and it goes through a mill to be then process, then sold for consumption, is that farmer actually growing food that is directly going to consumers or going to a mill and not all of that is used for food or for sale?

Councilmember Bynum: The seeds grown here are not sent to any ultimate consumer. The seed companies have admitted that, but if you are not aware of that fact, then I will move on to other questions.

Mr. Tresler: Well, I mean, their products actually make it to other growing centers, which actually then are developed and then make it to the farmer who then reaches the ultimate consumer.

Councilmember Bynum: Mr. Tresler, to value the land the only thing we have is the lease payments because the seed companies are not selling their product for cash to anyone. They are sending their seeds to other researchers in their own company, correct?

Mr. Tresler: I am not sure exactly where they sell it to. They may sell it to other growers who then directly sell it to consumers, but I think that is really not the point, in my opinion.

Councilmember Bynum: For five hundred twenty-nine (529) acres in Puhi that we obtained a contract for, your company is currently getting between three hundred and four thousand dollars (\$304,000) and four hundred nine thousand dollars (\$409,000) a year for those five hundred twenty-nine (529) acres, correct?

Mr. Tresler: No, not correct.

Councilmember Bynum: I am sorry.

Mr. Tresler: Not correct. We do not own that land anymore.

Councilmember Bynum: Okay. I am sorry. When you negotiated the contract for that land, Grove Farm was getting those payments, and that is the current contract?

Mr. Tresler: You are saying five hundred (500) acres.

Councilmember Bynum: I have your contracts and I have the numbers.

Mr. Tresler: Five hundred (500) acres ...

Councilmember Bynum: You are paying a...

Mr. Tresler: ...if the lease payments were five hundred dollars (\$500), that is...

Councilmember Bynum: Well, the lease payments are a minimum of five hundred seventy-five dollars (\$575) per acre.

Mr. Tresler: Right, which also includes water.

Councilmember Bynum: Right, we have disclosed all of that.

Mr. Tresler: Right. Anyway, well, I mean, gross would be two hundred fifty thousand dollars (\$250,000).

Councilmember Bynum: They also have to pay a two hundred dollars (\$200) an acre premium if they are doing the small parcel research.

Mr. Tresler: Right.

Councilmember Bynum: The research fee, correct?

Mr. Tresler: Right.

Councilmember Bynum: My assumption is, and then I looked at the contracts that the new owners have, they say if you use any portion of that land, you have to pay the two hundred dollars (\$200) fee, right?

Mr. Tresler: I am not sure what the new owner's contracts say because I do not have a copy of that.

Councilmember Bynum: Based on those contracts, the lessee, the seed company is paying a minimum of three hundred four thousand dollars (\$304,000) a year, more likely, four hundred nine thousand dollars (\$409,000) based on the contract.

Mr. Tresler: I do not have the contract in front of me. That is not our contract, again, Mr. Bynum. If you do your simple math, if it is five hundred dollars (\$500) time five hundred acres (500), that is two hundred fifty thousand dollars (\$250,000). If there is a portion that is used as research, then that would be seven hundred dollars (\$700) an acre times the acres used which is normally a very small fraction of parent seed.

Councilmember Bynum: At a minimum for a five hundred twenty-nine (529) acres at five hundred seventy-five dollars (\$575) an acre, it is three hundred thousand dollars (\$300,000).

Mr. Tresler: Okay.

Councilmember Bynum: Are you aware of what the average lease payments are for diversified agriculture on a myriad of other contracts?

Mr. Tresler: Those agriculture rates go from two hundred fifty dollars (\$250) an acre to three hundred dollars (\$350) an acre at times.

Councilmember Bynum: For diversified agriculture?

Mr. Tresler: Diversified agriculture, yes.

Councilmember Bynum: I have looked at a whole bunch of contracts where the payments are between fifty dollars (\$50) and one hundred dollars (\$100).

Mr. Tresler: Well, again, it depends on which area, what land type.

Councilmember Bynum: Right.

Mr. Tresler: You also have pasture which is much less.

Councilmember Bynum: Right.

Mr. Tresler: Pasture goes from eight dollars (\$8) to thirty-five dollars (\$35) an acre per year, and that includes water. Diversified agriculture, meaning the small farmers, are not that far away as compared to the numbers you have there. There is a difference. There clearly is. Again, I have to say, if you want to talk economics, we subsidize agriculture on our land even with the seed corn companies there. Those funds are used to help maintain infrastructure, not improve infrastructure now. They do a lot of improvements to infrastructure which then benefits other small farmers. Besides paying rent, they help maintain roads and water infrastructure. They understand that they are the bigger farmer. We leverage that, offer them to then help us with the cost of the maintenance of the infrastructure. The small farmer benefits tremendously. Simply if we did not have them, we would then be subsidizing our operations, which was historically, which why the company got in trouble was with land sales, development, and rent of our commercial/industrial property. Now, when the economy goes south, you struggle and you cannot sell land and you cannot pay your bill, that is a bad, bad formula. That is a bad business model and we have tried to change that.

Councilmember Bynum: Mike, my question is, if you are receiving three hundred thousand dollars (\$300,000) for five hundred (500) acres minimum and the taxes you are paying are only seven thousand dollars (\$7,000), does that seem like a fair share of taxation?

Mr. Tresler: Yes, because it falls under the agricultural dedication law and it is agriculture. Now, if you want to also add a comparison as to how they affect the economy and how much people they hire, how much wages they pay, then you need to look at that too, Mr. Bynum, to be fair. That other thing, again, anyway. I just think you really need to look at the entire picture.

Councilmember Bynum: You just said that these numbers are accurate, we can trust that what is in your contract is what is currently being paid?

Mr. Tresler: Yes, if it is our contract that you are looking at.

Councilmember Bynum: Thank you.

Mr. Tresler: Thank you.

Councilmember Chock: Thank you. Any other questions? If not, thank you.

Councilmember Yukimura: Oh, I do.

Councilmember Chock: Oh, we have one (1) more.

Councilmember Yukimura: Mike, are you familiar with the amendment that we are now considering?

Mr. Tresler: I just read through it when I got it over there.

Councilmember Yukimura: Do you understand conceptually that we are not putting it in another tax class for a different rate?



Mr. Tresler: Yes. I mean, I know you are just trying to -- within the confines of what is there, the structure, add another category from...

Councilmember Yukimura: For valuation, not rate.

Mr. Tresler: Yes, whatever. It is at two hundred dollars (\$200) an acre fix or whatever how they do diversified agriculture and pasture, how you discriminate between that. I understand that, but what it reads is not exactly that. The concern is this trying to define what is GMO and then if our farmers grow GMO, then they fall into that category. That is a concern too. Then the small farmer who cannot afford to pay the tax is going to pay a higher tax rate because they grow GMO plants. Now, you are shaking your head, but how can you tell? I cannot tell? How do you know? I mean, is there a sure shot way of doing that? That is my question now. If it is, then I am mistaken, then fine. I do not know. When you read that thing, that is a concern. I just have that. That is a concern that needs to be clarified.

Councilmember Yukimura: I am so glad you are here because that is what we want to here, what the concerns are.

Mr. Tresler: The other thing I would like to add, and I appreciate the time, is I have been pounding away since 2007 they started Grove Farm at the seed corn companies through their cover crop programs working with ranchers, working with other small farmers, and so forth, and they have. They only use the land for a portion of the year and then it is in cover crop, and then those crops are being used for animal feed and actually growing sweet potatoes and other ground that can be eaten or consumed. My question is, we want to encourage them to continue that practice, but then you just tax them in this whole GMO or whatever Genetically Modified rate. It does not encourage them to continue that practice. When you have multiple uses of a land area, then how do you then treat that?

Councilmember Yukimura: That is a good question. I guess that is why we think the lease rents is an accurate way to go because you will be leasing large areas, sometimes they will be fallow, sometimes they will be growing crops, but between the willing buyer and the willing seller you are going to define what the total value is.

Mr. Tresler: Yes, I disagree.

Councilmember Yukimura: Is that incorrect?

Mr. Tresler: Yes, I disagree.

Councilmember Yukimura: Can you explain?

Mr. Tresler: I mean, if we do not do it as a practice, it is not going to be defensible.

Councilmember Yukimura: I am sorry.

Mr. Tresler: If you do not do it as a practice, it is not in the Ordinance, are you saying you are going to amend the overall Tax Ordinance and allow for that? It is going to vary and...

Councilmember Yukimura: What is going to vary?

Mr. Tresler: The lease rents amongst properties.

Councilmember Yukimura: Right.

Mr. Tresler: Right, and so then you have to do it for regular small farmers too. I mean, then amongst ranchers and whoever pays a less amount then should...

Councilmember Yukimura: It is sort of an industry standard, you are right.

Mr. Tresler: You either need to establish, in my opinion, an industry standard whether it is two hundred dollars (\$200) an acre because if diversified is taxed at one hundred dollars (\$100) an acre, then they are double that or whatever. I mean, I do not know. Steve would be the expert on that, but I am just saying it causes an issue, and to administer this thing is just going to be a nightmare. Let us get back to this tax policy thing. I just have to say one more thing before I am done. Grove Farm, if we consciously and we do not take an aggressive tax policy. I said that. We have paid over two million four hundred thousand dollars (\$2,400,000) in taxes on the (inaudible) parcel when we clearly could have. If it was my decision, we would have dedicated it and not pay that amount of money to the County, and had it fenced up I pasture or something. We also, if we choose not to dedicate a parcel and there is a farmer on there, we do not make him pay market taxes. We calculate his taxes as if he got the dedication, and then we pay the difference. I mean, that is the extent that we have gone to help our small farmers and things. Any insinuation of us trying to evade taxes and conspiring to do that, that other people have said or made accusations towards...

Councilmember Yukimura: I am not making...

Mr. Tresler: I just want to make that clear, that has been the company practice. It is not you, Councilmember Yukimura, but I...

Councilmember Yukimura: I am not making any assumptions about that at all.

Mr. Tresler: Right. I know, but this needs—it is part of the entire issue. I just needed to get that off of my chest and make that statement.

Councilmember Chock: Okay.

Councilmember Yukimura: Okay.

Councilmember Chock: Let us get through it.

Councilmember Yukimura: Thank you.

Councilmember Chock: Any more questions? Thank you. Caption break? Okay, everyone, we are on a caption break, ten (10) minutes.

Councilmember Rapozo: Mr. Chair.

Councilmember Yukimura: Tom wanted to speak.

Councilmember Rapozo: It is ten (10) minutes after 6:00 p.m. We have to take a dinner break at 6:30 p.m., we are going come back at twenty (20) after 6:00 p.m. only break at 6:30 p.m. I do not envision us...

Councilmember Chock: We are not going to get through it.

Councilmember Rapozo: No.

Councilmember Chock: Let us take a dinner break then at this time, come back at...

Councilmember Yukimura: Why do we not have Tom speak?

Councilmember Chock: Why do we not do that? Why do we not let these people speak? We have a couple more people to speak and then we will take the dinner break.

Councilmember Rapozo: Well, you have to check with BC because of the captioner.

Councilmember Chock: Can? Okay. Let us get a couple more people out of the way who can speak, go on our dinner break, and come back.

Councilmember Hooser: Do we have to take an hour dinner?

Councilmember Chock: We can do forty-five (45) minutes, is that right? Let us continue. We have about ten (10) more minutes.

TOM SHIGEMOTO: Thank you very much. For the record, Tom Shigemoto. I do not hold a candle when it comes to taxes through Mike Tresler. He knows so much more about this issue than I do. I am up here to first of all, reiterate our position, and you received copies or written testimony from my company, A&B Properties, as well as my testimony individually. I think the Bill is poorly written. I have stated this before, that I do not think this is necessary, but so be it. That being said, the amendments that are being proposed by Councilmember Yukimura, I believe I understand, but I do not think that requiring the owners to disclose the lease rents and the terms are necessary. Why do you need that kind of information? It is proprietary. Therefore, I object to that, I object to this amendment period, and I object to the entire Bill for the reasons expressed in my written testimony. Thank you.

Councilmember Yukimura: Question.

Councilmember Chock: Thank you. We have two (2) questions.  
Councilmember Bynum.

Councilmember Bynum: Tom, you are right. What lease payments are made are proprietary until you ask the County of Kaua'i to give you a favorable tax status. Then, it is germane. We know now that we were leasing gland, diversified agriculture as I said from many of that I have seen, between thirty-five dollars (\$35) and maybe at the maximum one hundred dollars (\$100). Now we see lease payments of five hundred seventy-five dollars (\$575) an acre. That is clearly different than what was out there before. You are right. Those are proprietary. You do not have to share that information until you ask the other taxpayers to give you a break. That is what this is. This is a thing that gives a tax break. Other taxpayers pay more taxes in order to give this tax break to keep agriculture going. We heard Mr. Tresler. This will not impact one (1) small farmer whatsoever. This amendment, the way it is written, clears up a lot of your earlier concerns about how you define this because it is clearly defined. You have this research permit by the Federal government, then you are engaged in these practices, and this Bill applies to you. I just wanted to say,

I agree with you. That information is proprietary until you ask the citizens of Kaua'i to give you a tax break.

Mr. Shigemoto: Does everybody who farms have to provide this information?

Councilmember Bynum: No.

Mr. Shigemoto: All of the landowners?

Councilmember Bynum: No.

Mr. Shigemoto: Only the dedicated ones?

Councilmember Bynum: Because we have already determined a rate for pasture, we determined a rate for diversified agriculture, but this is something different. This is research use of the land, right, and we need to determine a fair rate, fair, for that use. That is what this amendment does. It clears up all of your concerns. In the original Bill that I wrote was going to have some issues with definition. You came here and raised those concerns, and this is a response to those concerns. Make it more clearly defined, make it fair, and give the landowners options. They can either participate in this program under parameters that are specific to this use or they can choose not to. In one of these provisions, you see it says if you choose not to, you can leave the dedication with no penalties or no interest.

Councilmember Chock: Questions? More questions from Councilmember Yukimura.

Councilmember Yukimura: Tom, I hear the concern about proprietary. I think in some cases we have allowed information to be submitted but not to be counted as public information, but to the Department for the purposes of assessing value.

Mr. Shigemoto: Sure.

Councilmember Yukimura: Would that feel better for you?

Mr. Shigemoto: That would be better.

Councilmember Yukimura: Okay.

Mr. Shigemoto: It is like disclosing your financial situation when you are appointed to the Board of Regions. It is not necessary. It is none of anybody's business.

Councilmember Yukimura: Well, in this case, it is kind of necessary information if we are trying to determine value, and it is how you –when you ask for information, do you ask for a lot of information that is not necessary or do you just ask for what you need. In the case of leases, I think we need that information.

Mr. Shigemoto: The Bill as written, still refers to parcels, the parcel being taxed. When you have diversified uses on a large parcel, how is the tax going to be determined or how is the valuation going to be determined? You break it down by use?

Councilmember Yukimura: That is a fair question, and I think Steve should participate in answering it.

Councilmember Chock: Okay, well, let us get to other questions since those will have to be discussed further. Go ahead Councilmember Hooser.

Councilmember Hooser: Good evening. We are trying to understand the objections to it because we have one classification, if you would, for pasture and one for diversified. I think we even treat forestry different from those two. Are you objecting to having those separate classifications?

Mr. Shigemoto: I object to the fact that this does not help agriculture period when you are trying to create it. What is the purpose of creating a separate tax class for all of these different uses? Why does it, like Mike explained earlier, why does the seed corn companies not fall under diversified agriculture or why can they not? What is the purpose of creating a bioresearch class?

Councilmember Hooser: I do not think –I mean, I understand your question and I do not want to debate right now. I believe the intent of the law is certain practices have different impacts and certain practices, the public wants to subsidize more than other practices. For example, the forestry, the planting of trees. The tree farmers came in and said, “We need help from the island.” So, something was done. There are people that graze livestock that it is harder for them to make money. The tax structure is based around those needs. Certainly, the biotech industry has different needs and different impacts. I believe that is a fundamental premise that we are basing this on. In terms of the proprietary information, just like you. You brought up the University of Hawai‘i Board Regents. You should not have to provide the information, but the law was passed, so you had to provide the information and then you resigned. People resigned.

Mr. Shigemoto: Right.

Councilmember Hooser: Just like Councilmember Bynum said, this is a tax subsidy. The public is subsidizing your activity or the person, the taxpayer’s activity, subsidizing it. In return for that subsidy, certain information has to be provided, and that is it. If there is not subsidy, then there are different rules.

Mr. Shigemoto: Are you saying that maybe the dedication laws are wrong?

Councilmember Hooser: I am not saying the dedication –we have a Bill before us that is adding another...

Mr. Shigemoto: Because you do a law in lands and agriculture to be dedicated.

Councilmember Hooser: Right.

Mr. Shigemoto: Therefore, take advantage of reduced taxes. You have different crops and you have different kinds of agricultural uses. All these seed corn companies are doing is trying to follow the laws and fall under an agriculture dedication that is allowed by law.

Councilmember Hooser: Right.

Mr. Shigemoto:  
biotech research, but why?

Now you are adding in this particular class,

Councilmember Hooser:

Okay. Thank you.

Mr. Shigemoto:  
my opinion...

In your opinion, it is not agriculture, but in

Councilmember Hooser:

No, I did not say that. I said there are different types of agriculture that has different impacts.

Mr. Shigemoto:

What kind of impacts?

Councilmember Hooser:  
you said that I said.

But I am just saying, do not put words when

Mr. Shigemoto:

I am sorry. I did not mean to do that.

Councilmember Hooser:

It is just like pasture land, diversified agriculture, and trees. There are different things.

Mr. Shigemoto:

Sure, I understand that.

Councilmember Hooser:

Perhaps one could argue, just like the existing law does, perhaps we could argue that they should be deeded differently just like pasture, diversified agriculture, and trees are treated differently now. If we have different classifications, which we do, then one could argue that good public policy would look at what is the difference of one more classification, just like we have Timeshare, Hotel, TVR, long-term rental. It is just –anyway. Thank you. I will let somebody else. We could go on.

Councilmember Chock:

You have another question?

Councilmember Yukimura:

I would like to try to answer Tom's question because it is a legitimate one, if I may? I appreciate this dialogue very much, and I will be brief. To answer your question why are we creating a third category, let us just be clear. It is not a new tax class. The tax classes, they get different tax rates or they allow you to set different tax rates, but this is still going to be in the classification of agriculture. Whatever rate is applied to diversified agriculture or pasture or any other agriculture, it is going to be the same. We are not selecting out biotech agriculture to be taxed at a different tax rate, okay? It is all going to still be in agriculture.

Mr. Shigemoto:

I understand.

Councilmember Yukimura:

Okay. The difference is in valuation because taxes are determined by rate times value.

Mr. Shigemoto:

Yes.

Councilmember Yukimura:

The way we do value is where the agriculture subsidies come, because actually, the tax rate for agriculture is higher than for Homestead, right? Where you get the real big subsidy is in how we value land. Instead of valuing it at what you could do as a country estate because some of our laws allow that, we are valuing it based on the nature of the crop. Pasture as one (1) crop, diversified agriculture, and what we are saying is biotech, and I said from the

very first meeting on this, I think biotech research has raised the level of lease rents in a quantum difference. That is why companies and landowners want to lease to biotech rather than diversified agriculture, because they can charge more for the rent and they get people willing to spend money on the irrigation system and all of that because the seed companies want to use their land because we have some of the best agriculture land in the State. It is worth the seed company's while to offer lease rents so that they can rent, and landowners to a certain extent, these higher leases can knock out diversified agriculture –diversified agriculture has a hard time competing against biotech lease rents. All we are doing is saying, actually within the family of agriculture, there is a different valuation that is not our doing. It is the nature of the industry and the nature of our lands, and that needs to be reflected. That is how I have been looking at this. It is staying with the rate versus valuation. What is a fair way to value and it is reflecting the higher lease rents that biotech is willing and able to give landowners, and therefore, have access to our agriculture lands.

Councilmember Hooser: Well said.

Councilmember Yukimura: If you have –and we want to know how you are going to be impacted because I personally want to do this fairly, and I believe the way we are doing it is not going to increase the valuation much. The estimation is thirty-three dollars (\$33) to fifty dollars (\$50) more per acre of value.

Councilmember Chock: Okay. Thank you. We are going to go to dinner break already because everyone needs a break.

Mr. Shigemoto: Okay.

Councilmember Chock: I appreciate the questions and testimony. We will come back to public testimony in forty-five (45) minutes, ten (10) after 7:00 p.m.

Mr. Shigemoto: Can I ask a question before you close? Will this be voted on today, tonight?

Councilmember Rapozo: Yes.

Councilmember Chock: Yes.

Mr. Shigemoto: Okay, thank you.

There being no objections, the meeting recessed at 6:26 p.m.

The meeting reconvened at 7:14 p.m., and proceeded as follows:

*(Councilmember Rapozo was noted as not present.)*

Councilmember Chock: Alright, thank you. We are back from our dinner break. We were in public testimony. At this time, I would like to call if anyone else would like to testify at this time.

There being no objections, the rules were suspended to take public testimony.

There being no one to provide public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Seeing on one else in the audience, I call this meeting back to order for discussion. Anyone would like to floor to discuss? Councilmember Bynum.

Councilmember Bynum: I will try to be as brief as I can. I introduced this Bill initially and suggested that this research use of the land go into a separate tax category, which would have brought it to market tax. We did a financial analysis and we see that the difference between the agricultural dedicated rate and the market tax for the research use of over fifteen thousand (15,000) acres is not that great, in my opinion.

*(Councilmember Rapozo was noted as present.)*

Councilmember Bynum: I am being clear. My original intent was get this land put separately at market tax and then do the kind of study that this amendment envisions to capitalize the cost based on what we know are the least payments, which have escalated dramatically. We had *kama'āina* land users and other land users that were paying leases under one hundred dollars (\$100), some really like twenty dollars (\$20), fifteen dollars (\$15) an acre. Now we know that some of this land is being leased for seven hundred seventy-five dollars (\$775) an acre. That value difference, if we capitalized it in a way any investor would then, I think that we are going to see the value of that lease is greater than market value. The amendment that Ms. Yukimura has worked on keeps this in agricultural dedication and does what was needed as she said from the beginning when she said when she conceptualized this as I did, that because there is no way to value this research use, it did not fit the current law. She has made it now fit the law. What is the reason we are doing this? The same reason we have done all of the other tax changes, fair taxation as best as we can. What is fair is if the agricultural land is producing just a little bit and we want to keep it in agricultural, we incentivized that. That is what we are doing for small farmers and will continue to do. This amendment actually answers all of the questions that came up here. Wetlands are included. How do we distinguish? This makes it very clear because only these lands have these research permits from the Federal government. It is clear how to identify the lands, it is clear that they are paying much higher lease payments than other agricultural uses, and so it is fair that we capitalize that cost and not continue to give a subsidy if it is not warranted. Now we have the data to make those determinations. If the capitalized cost analysis says that there is a rate that is lower than the market rate, then that is what we will apply to these lands. If there is a capitalized cost that is greater than the market rate, with this amendment, it allows the seed company or the land owner, the lessee, to decide if they want to stay in the program or exist it. If they exist the program –so, this would never allow the taxes to go above market. Anyway, I think it answers a lot of the questions. It is good tax policy, it is fair, there will be a follow-up study to determine the fairness of it that will be done by the Finance folks, and it is an amendment that I can support and that I think is a really good Bill. Thank you.

Councilmember Chock: Okay, thank you. Councilmember Hooser.

Councilmember Hooser: I will also be supporting this. I want to thank Councilmember Bynum for initiating this conversation. It is a very important conversation. At the end of the day, it is good public policy. I want to thank Councilmember Yukimura for sticking with it and offering us an alternative, which at the end of the day, is a good one that I think is ultimately very, very fair. Again, I appreciate the hard work that she has put into it and discussions that all of us have had on this issue. If we are going to be offering subsidies, we need to offer them fairly and this was mentioned in the earlier discussions to treat different kinds of



agriculture differently in terms of pasture lands and diversifying agriculture, and even forestry and tree farming. I think this is good. I am happy to vote yes and move it forward. Thank you.

Councilmember Chock:

Thank you. Councilmember Yukimura.

Councilmember Yukimura: Yes. My whole intention has been to reflect reality and be fair. I think we found a way. I think the industry is more fearful of consequences that will not happen because they increase in value is not that much as we think it is going to be, until we go through the process of valuation, and that will be done by the Finance Department. We cannot tell for sure. The thing is that it reflects, as I said, the lease rents which are not something the Council controls, but what is controlled between the landowner and the lessee. Actually, the great news that I think it is good news, that the assessed value is not far from market value, and as I have been able to understand it, it is because market value, especially for the large projects, because of the one-time subdivision law, does not allow for massive subdivision. Therefore, if the values in the biotechnology (biotech) agriculture and the development market value are not that different, that means the landowners will not have a big incentive to develop their lands, if they are getting as much as they could get from biotech as they would get from development. To me, that is a value that biotech agriculture is actually proving here. I think this is worth a try and I think it is based on well supported process. I am hopeful that it will make our laws better and not really hurt our biotech agriculture.

Councilmember Chock:  
Kagawa.

Thank you. Anyone else? Councilmember

Councilmember Kagawa: Anytime we create new laws and we have the Finance Director sit here and say, "We are going to be breaking new ground" or "assessing values by lease rents has not been tested," it worries me. We tried to break new ground with Bill No. 2491, Draft 2 and we lost. I am fearful of potential problems that when you break new ground on an issue such as this. While I respect the County Attorney's opinion, I did not see the detailed work like Mauna Kea put in his Bill No. 2491, Draft 2 opinion. I think there are two (2) options. I can count. It is going to pass tonight, but there are two (2) options left that can possibly take a closer look and see whether a Bill such as this is worthy of passage. That is in the course of the Mayor. He can veto it. Perhaps the new Council can relook at this Bill whether it is in the best interest of our taxpayers because I surely feel like in such an important issue like this on an industry that is huge, I grew up here two (2) houses from Olokele Sugar Farm. The Federal government subsidized the sugar industry huge during the waning years before they close down. Huge. Millions. Today, we complain about the County subsidizing in the form of real property taxes, the seed corn industry. I mean, the agriculture industry has been subsidized in order to be prosperous. I think some of the benefits of the County subsidizing the seed companies is that there have been some benefits like residents at Pākalā and Kaumakani still being honored for their past work with the sugar companies and allowed to rent for one hundred dollars (\$100) a month or what have you, is their rent. Again, the unforeseen consequence. We can sit here and say, "They pay huge lease rents, they deserve to pay large sums. They can afford it. They should pay it. It is fair." Well, how fair will it be when these residents that used to work for the sugar companies will be displaced from their homes, possibly, because the seed company will say, "We cannot continue these leases"? The big landowners will no longer be able to subsidize the homes and honor these former workers. There are unforeseen circumstances. No to say that there are unforeseen circumstances with the legality or ensuring that this Bill will not be challenged by the seed companies. Of course they are going to challenge a higher real property tax bill. I mean, it is common sense. When you say you are breaking new ground like no other place is doing it in the State—Steve could not even tell us if it is

done anywhere else in this Country using lease rents when the rest of the tax rates are all based on market value. It troubles me that we have to rush tonight and not do further research on whether it is "bulletproof," as I would say. Again, I will not be supporting it and there are a couple more options to deal with this even though it passes tonight. Thank you.

Councilmember Chock:

Councilmember Rapozo.

Councilmember Rapozo: Thank you, Mr. Chair. I go back to Anne's testimony earlier tonight with the prior tax bill. I think the same concerns apply to this tax bill. You cannot differentiate the position because oh, this is a seed company so we will take a chance. We have to apply the same standard. I hope you understand that. You apply the same standard of knowing what the outcomes will be before you pass legislation. Councilmember Yukimura said, "It is worth a try." It is worth a try? That is not what we do. We do not go trial and error here. We investigate, we come up with the known, and then we make the determination. Not just say, "It looks good." This is a targeted bill. To say that this is not a targeted bill, I think, is just not true, although I agree we can set different classifications. It is like, remember those years we never raised the tax rates, but everybody's tax bills went through the roof because of the assessments? The Council could sit back and say, "We never raised taxes." Well, no, we never raised the tax rate, but the County, through the process of assessments and appraisals, raised the taxes. Sugar coat it how you want. The reality is we are going after the seed companies. This is what concerns me about this Bill, one of the reasons. We talk about biotech research, right? Everybody talks about biotech research because they are testing and they are experimenting, but when you read the definition, it does not just limit it to biotech research. It says, "Biotech research shall include any parcel greater than one (1) acre, any part of which is used within a calendar year for research or biotech crop cultivation." This is what Maui is going through. The fact that you might be a farmer that you do not do biotech research, but through your research and investigation you determine that this seed that is available on the market is a product of Genetically Modified Organism (GMO), is a product of biotech engineering. So, you are going to buy that seed because it gives you the best yield for the least cost. Now, you are impacted by the Bill. You are not doing experimentation. You are cultivating your crops, but the choice to use a seed that was genetically modified creates this for you. Now you become the evil biotech industry, and that is what this Bill will affect. The Sunrise Papaya, I do not have to tell you about that. That is a GMO crop. They do not research. They are growing a crop that the people in this world use, they buy, and they would be impacted by this because the language does not limit it to experimentation or research. It says, "cultivation." Now, why would we want to do that? When you look at subsidies, pasture land, what return does a pasture land have on the community? Zero (0). What return does these biotech companies on the West Side or wherever they are at give back to the community in the ways of jobs, community involvement, and all of what they do for our community? I think Mike did a great example or his explanation of how their contributions to the infrastructure, their maintenance of infrastructure on their dime helps the small farmers that are leasing lands, but we are going to punish them by creating a new classification so we can tax them differently. Do you see what I am saying? It is that this is a complicated complex issue. Although we may feel good, the far-reaching impacts is what we have to consider before we say, "Yes" or before we say, "No." I see no justification as I asked earlier of Mona, and I appreciate the responses that we got from Mona and Steve. The fact that we are going to start looking at leases. Basically, an ability to pay. What makes this different than any big other commercial development like a hotel, like a shopping center? Do we look at the average daily rate of a hotel and create a whole new classification based on that? Do we do that with Kukui Grove or the other shopping centers because maybe one (1) vendor or one (1) merchant –see, leases are

confidential. I mean, I know that. I rented office space and I will be honest. I mean, it is all different owners now, but my lease was a lot less than my neighboring unit. That is because the person was trying to help me out...

Ms. Fountain-Tanigawa: Five (5) minutes.

Councilmember Rapozo: ...because I was getting started. Is that fair to judge the taxes? No, I do not think so. Anyway, my time is up. I will not be supporting the Bill. Thank you.

Councilmember Chock: Thank you. Great. Anyone else? Have I gotten to everyone? I am sorry if I missed you.

Councilmember Yukimura: Just a couple of corrections to what Councilmember Rapozo has said. If you look at the definition of biotech crop research and biotech crop cultivation it involves crops regulated by the Federal government. It is not small GMO farmers.

Councilmember Rapozo: Hang on, let me just clarify.

Councilmember Chock: Okay.

Councilmember Rapozo: Only because the crop, the seed that you are buying from wherever, is regulated. The seed that I purchase from Syngenta, Monsanto, or Pioneer, that is regulated.

Councilmember Yukimura: I do not believe so.

Councilmember Rapozo: Okay.

Councilmember Yukimura: I am not saying at all, that this will not increase taxes. This will increase taxes, but I think it will be at a very small level and all it will be is to reflect the actual agriculture value of the land. What return on pasture? Pasture does give food. It does give some jobs. There is return on pasture, and we do not refrain from taxing hotels because they give all of these wonderful things to the community. I do acknowledge that the biotech industry does provide a lot of jobs, and many at very good salaries. We are not trying to punish them in anyway. We are just trying to recognize the dramatic difference in lease values versus diversified agriculture or pasture. That is all I want to say.

Councilmember Chock: Okay. I think everyone else had has a chance to speak. Is that right? I want to move us to this amendment. Initially, I had a lot of concerns about the original Bill and the unintended consequences. I feel really good about where Councilmember Yukimura is taking this. I am much more comfortable with how it is being presented in a category such as. I am supportive of this amendment, and if we can have a roll call on this item. I want to move us forward.

The motion to amend Bill No. 2546, Draft 2, as circulated, as shown in the Floor Amendment, which is attached hereto and incorporated herein as Attachment 4 was then put, and carried by the following vote:

FOR AMENDMENT:	Bynum, Chock, Hooser, Yukimura	TOTAL – 4,
AGAINST AMENDMENT:	Kagawa, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 4:2.

Councilmember Chock: 4:2. Motion passes. Roll call on the main motion.

The motion for adoption of Bill No. 2546, Draft 2, as amended to Bill No. 2546, Draft 3, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Yukimura	TOTAL – 4,
AGAINST ADOPTION:	Kagawa, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Councilmember Chock: 4:2.

Ms. Fountain-Tanigawa: 4:2.

Councilmember Chock: Motion passes. Great. I think that was the main motion, just to verify, as amended. I think that brings us to the last item on our agenda, which is an Executive Session. We already went through public testimony on that, and also had it read. I do want to take a moment, though, to recognize our County Attorney who will be going into Executive Session with Mona Clark. Tonight is her last night and her last Council Meeting as well. I wanted to thank her for many years of service and her professionalism. Ken, did you want to say something as well for Mona? This is what we can do. I know we did it this morning when everyone else was leaving, but we have to move this along fast. If we can save our thank-yous for our Executive Session, members, then we can ask Ken to give you a minute, alright?

There being no objections, the rules were suspended.

Mr. Taylor: Thank you, Chair and members of the Council. My name is Ken Taylor. It has come to my attention earlier that this may be the last time Mona has an opportunity to testify or give information to you folks because this is her last week on the job. I just wanted to publicly thank her for all of her work and effort as I feel strong that her ethical and moral compass has been in good working order, and she has done an outstanding job for the County on behalf of the County. I just wanted to take this opportunity to publicly thank her for all of her efforts and wish her well in her endeavors as she moves on. Thank you.

Councilmember Chock: Thank you.

Councilmember Bynum: Thank you.

Councilmember Chock: Thanks you again. We will not have to come back to session, I believe. We are just going to go right into Executive Session at this time. Thank you so much.

ADJOURNMENT:

Councilmember Rapozo moved to adjourn the November 19, 2014 Council Meeting, seconded by Councilmember Kagawa, and carried by a vote of 6:0:1 (*Council Chair Furfaro was excused*).

There being no further business, the meeting was adjourned at 7:36 p.m.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a series of smaller, connected strokes that end in a horizontal line.

JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

:aa



(November 19, 2014)  
FLOOR AMENDMENT NO. TB #1  
Bill No. 2461, Draft 4, Relating to Shoreline Setbacks

Introduced By: TIM BYNUM

Amend Section 2 of Bill No. 2461, Draft 4, by amending subsection (a) of Section 8-27.3 to read as follows:

“(a) Except in either of the following two cases and except as permitted in Section 8-27.7, a shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article.

(1) [In cases where the proposed structure or subdivision satisfies the following four criteria:

(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) V or VE flood zones;

(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above mean sea level or greater;

(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline and that it will not affect or be affected by coastal erosion or hazards; and

(D) The shoreline setback shall be sixty (60) feet from the certified shoreline which has been established not more than twelve (12) months from the date of the application for the exception under this section.] In cases where the structure is permitted under the provisions of Section 8-27.7.

(2) In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant’s proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant’s property, elevation, and the history of coastal hazards in the area.”

(Material to be deleted is bracketed. New material is underscored.)  
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(November 19, 2014)

**FLOOR AMENDMENT**

Bill No. 2461, Draft 4, Relating to Shoreline Setback Regulations

Introduced by: JoAnn A. Yukimura

Amend Section 2 of Bill No. 2461, Draft 4, to read as follows:

“SECTION 2. Chapter 8, Article 27 of the Kaua‘i County Code 1987, as amended, is hereby amended as follows:

**“ARTICLE 27. SHORELINE SETBACK AND COASTAL PROTECTION**

[Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kaua‘i, State of Hawai‘i, that are:

- (a) abutting the shoreline, or
- (b) not abutting the shoreline but located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Sec. 8-27.2 Definitions.

For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

“Adversely affect beach processes” means to pose a potential immediate or future adverse effect on beach processes as a result of a structure or activity located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

“Annual coastal erosion rate” means the annual rate of coastal erosion calculated by following a procedure established in the Hawai‘i Coastal Hazard Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai‘i, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai‘i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration at section 4.1.

“Average lot depth” means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

“Board” shall mean the Board of Land and Natural Resources, State of Hawai‘i.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

"Certified Shoreline" means the shoreline established by Board pursuant to HRS 205A-42, as amended.

"Coastal Dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

"Coastal erosion hazard zone" shall include all of the land between the shoreline and the shoreline setback line.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF) and vegetation line. The coastal erosion study shall be carried out by a qualified professional consultant as defined in this article following procedures described in Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook, (January 2005). The coastal erosion study shall include but not be limited to:

- (1) Mapping of the historical shoreline positions including both the SCRF and the vegetation line for the subject parcel, as well as the local and regional littoral cell;

- (2) The method resulting in the larger erosion rate (SCRF/toe of beach vs. vegetation line) shall be used to establish the erosion rate unless there is clear evidence to indicate another method is a more accurate representation of historic shoreline change.

- (3) Uncertainty or error calculation of the data and the annual erosion rate;

- (4) Additional information relevant to the erosion study shall include: a current certified shoreline survey, construction plans, if any, existing and finished contours; photographs of the shoreline setback area, analysis of the coastal erosion rates and shoreline processes.

- (5) Where a coastal erosion study is required to be done or is done voluntarily by an applicant, an application for a shoreline setback determination shall not be deemed complete unless the coastal erosion study has been accepted by the Director.

- (6) Any non-governmental study shall be valid for no longer than a period of five (5) years from the date of its acceptance by the Director which shall be by certified letter issued by the Planning Department.

- (7) The coastal erosion study shall consider the purpose of the study-to safely site structures away from hazards such as erosion so that shoreline hardening will not be required to protect the property during its useful life.

"Coastal hazard" means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

"Commission" means the Planning Commission of the County of Kaua'i.

“Department” means the Planning Department of the County of Kaua‘i.

“Director” means the Planning Director of the Planning Department of the County of Kaua‘i.

“Dwelling Unit” means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard Assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawai‘i Coastal Mitigation Guidebook, (January 2005).

“Lot” means a portion of land shown as a unit on an approved and recorded subdivision map.

“Makai” means seaward or in a seaward direction.

“Mauka” means landward or in a landward direction.

“Minimum buildable footprint” means the building footprint of 2,100 square feet or as allowed in Section 8-27.10(a).

“Minor activity” means an activity that:

- (1) costs less than \$125,000; and
- (2) does not adversely affect beach processes, does not artificially fix the shoreline, does not interfere significantly with public access or public views to and along the shoreline; and
- (3) does not impede the natural processes and/or movement of the shoreline or sand dunes, and does not alter the grade of the shoreline setback area, except for landscaping, clearing (grubbing) of vegetation, and grading, which are exempt from HRS Chapter 343; and
- (4) is consistent with the purposes of this article and HRS Chapter 205A, as amended.

“Minor structure” means:

- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua‘i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or
- (2) a structure that:
  - (A) costs less than \$125,000; and
  - (B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and
  - (C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and
  - (D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbecues, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are directed away from a valid certified shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor's declaration of emergency pursuant to Hawai'i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42USC5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

(1) Was completely built, in its present form, prior to June 22, 1970; or

(2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or

(3) Was outside the shoreline setback area when it received either a building permit or board approval; or

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawai'i and shall consist of data including but not limited to:

(1) Property boundaries;

(2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;

(3) Topography in and around the proposed construction;

(4) Any and all shoreline hardening;

(5) Flood zones, where applicable;

(6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;

(7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;

(8) A geo-referenced survey of the site; and

(9) Any. other information which identifies the existing condition of the subject parcel of land."

“Primary Coastal Dune” means the first dune encountered mauka of the beach. Qualified professional consultant" means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical

science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes.

"Qualified professional consultant" means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes.

"Qualified Demolition" means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

"Rebuilding" means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.

"Repair" means the fixing of damages to a structure where the cost thereof is valued by a licensed professional engineer or architect at less than fifty percent (50 %) of the current replacement cost of the structure.

"Revetment" shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

"Rocky Shoreline" means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

"Shoreline" is as defined in Section 205A-1, Hawai'i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai'i Revised Statutes, as amended.

"Shoreline Change Reference Feature (SCRF)" means a morphologic feature commonly referred to as the "toe" of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

"Shoreline setback area" means "shoreline area" as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Shoreline setback line" is as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Storm buffer zone" is the first forty feet (40') of the shoreline setback area as measured from the shoreline.

"Structure" is as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Substantial construction" means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

"Temporary structures or activities" means structures or activities that will exist for no longer than six (6) months and will not irreversibly and adversely affect

beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

“Use” means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

(a) No shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a shoreline survey certified not more than six (6) months prior to submission of the application.

(b) For lots with an average depth of one hundred sixty (160) feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1, or at the option of the applicant, upon a coastal erosion study as provided in Table 2.

Table 1: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet. See attached table and substitute for below:

If the average lot depth is:	100 feet or less	101 to 120 feet	121 to 140 feet	141 to 160 feet	161 to 180 feet	181 to 200 feet	More than 200 feet
Then the minimum setback is:	40 feet	50 feet	60 feet	70 feet	80 feet	90 feet	100 feet

(c) for lots with an average depth of more than one hundred sixty (160) feet, the shoreline setback line shall be established based on a coastal erosion study as provided in Table 2 and shall be no less than the setback distances set forth in Table 1 as applicable.

Table 2: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the building footprint and a coastal erosion study.

For structures with a building footprint that is:	Less than or equal to 5,000 square feet	Greater than 5,000 square feet
Then the Setback distance is:	40 feet plus 70 times the annual coastal erosion rate	40 feet plus 100 times the annual coastal erosion rate

(d) No zoning amendment, general plan amendment, development plan amendment, or subdivision, any of which involves lands, or any portion of land, subject to this Article, shall be approved without a coastal erosion study and a shoreline setback line established in accordance with Table 1 and Table 2. In cases where these methods result in lines that cross or intersect each other, the most mauka (landward) segments of each line shall form the shoreline setback line.

(e) When an application for a Shoreline Setback Determination has been certified complete by the Director on a form prescribed by the Director, the Director shall, within one hundred twenty (120) days of the completed application, issue a Shoreline Setback Determination which shall conform to the delineation of the shoreline setback line on a site plan pursuant to Section 8-27.3.

(f) The Director shall notify the commission at the Commission's next regularly scheduled meeting of the following:

(1) any newly completed applications for shoreline setback determination.

(2) any new shoreline setback determinations made by the Director including, but not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures or activities depicted on a plan drawn to scale, the purpose of the proposed structures and/or activities, the current certified shoreline, the setback calculations and setback line drawn on the plan, and copies of the coastal erosion study, if applicable.

(g) The Director's shoreline setback determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal of the Director's decision, the shoreline setback determinations shall not be final until the Commission completes its decision-making on the appeal.

(h) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(i) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

#### Sec. 8-27.4 Minimum Shoreline Setback Requirements

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

#### Sec. 8-27.5 Structures and Activities Subject to These Rules.

All structures and activities located or proposed to be located within the shoreline setback area shall conform to the requirements of this article. The requirements of this article shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately mauka of the shoreline setback area shall also be subject to these rules unless a certified and confirmed survey map, prepared in accordance with the provisions of section 8-27.3, is filed with the department showing that the construction is mauka of the shoreline setback area.

#### Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

(1) The taking from the shoreline setback area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or

(2) Where the mining or taking is authorized by a variance pursuant to these rules; or

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris

under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance. Non-native vegetation may be removed only if done in conjunction with a dune restoration and re-vegetation program approved by the Director that uses naturally occurring historical endemic plant species.

#### Sec 8-27.7 Permitted Structures and Activities Within the Shoreline Setback Area.

(a) The following structures and activities are permitted in the shoreline setback area. All structures and activities not specifically permitted in this section are prohibited without a variance.

(1) Existing conforming and nonconforming structures/activities.

(2) Structure or activity that received a shoreline variance or administrative approval prior to January 1, 2010.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary structures or activities" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse affects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the director may require a bond to ensure such restoration.

(5) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge the structure nor intensify the use of the structure or its impact on coastal processes;

(B) The repairs are valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure; and

(C) The repairs are permitted by building code, flood hazard regulations, and special management area requirements under HRS Chapter 205A.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure or activity approved by the Director as a minor structure or activity.

(9) Qualified demolition of existing structures.



(10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.

(11) Scientific studies and surveys, including archaeological surveys.

(12) Structures built to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.

(b) The following conditions shall apply to any new structure or activity permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure or activity shall not to be allowed to protect the permitted structure or activity during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation.

(4) All new structures or activities shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade and/or shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended.

(6) The requirements of this subsection 8-27.7(b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure or activity under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure or activity and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

#### Sec. 8-27.8 Structure and Activity Determinations.

(a) Any structure or activity proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this article.

(b) A proposed structure and activity in the shoreline setback area shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure:

(1) A request for determination for a structure or activity within the shoreline setback area shall be submitted to the department on a form prescribed by the Director.

(2) For public improvements and facilities whose valuation does not exceed \$125,000.00, and repairs to lawfully existing private structures as delineated in Section 8-27.7(a)(6), the request shall include construction and site plans, and a written text addressing compliance with the criteria set forth in this article.

The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline surveyor shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(3) For public improvements and facilities whose valuation exceeds \$125,000.00, and private improvements and facilities that are not repairs to lawfully existing structures as delineated in Section 8 27.7(a)(6), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Section 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, a list of proposed plants and their growth, existing and final contours, photographs, an environmental assessment, and a written text addressing compliance with the criteria set forth in this article.

(4) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall make a determination in accordance with the criteria set forth in this Article that the proposed activity or structure is:

- (A) Permitted under Section 8-27.7:
- (B) Permitted under Section 8-27.7 and subject to conditions:
- (C) Not permitted under Section 8-27.7: or
- (D) Outside of the shoreline setback area.

(5) The Director shall notify the commission at the commission's next regularly scheduled meeting of the following:

(A) any newly completed applications for approval for a structure or activity proposed within the shoreline setback area; and

(B) any new approvals or denials by the Director of structures or activities and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure or activity, and a discussion of the factors considered in making the decisions.

(6) The Director's structure and activity determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal from the Director's decision, the determinations shall not be final until the Commission completes its decision-making on the appeal.

(7) Minor structures or activities shall be completed or in operation respectively within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(8) For any non-minor structures or activities allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per a coastal erosion study. In all other cases where substantial construction has not occurred by the deadline, a new shoreline determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i.

#### Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) An administrative fee of \$300.00. The administrative fee shall be seventy-five hundred dollars (\$7,500) if the application is made after the structure is partially or fully built without the required approvals.

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;

(5) A site plan of the shoreline setback area, drawn to scale,

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the director; and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua'i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback area variance may be considered for a structure or activity otherwise prohibited by this Article, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;  
(2) Aquaculture;  
(3) Major landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline;

(4) Drainage;  
(5) Boating, maritime, or water sports recreational facilities;  
(6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;

(7) Private and public facilities or improvements that are clearly in the public interest;

(8) Private and public facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private and public facilities or improvements that may artificially fix the shoreline but not adversely affect beach processes; provided that, the commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the applicable shoreline setback line does not allow for the minimum buildable footprint for a new dwelling unit, the commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) The minimum buildable footprint may be reduced to 1500 square feet.

(D) If the foregoing approaches (a), (b), and (c) are done to the maximum extent practicable, the calculated shoreline setback may be reduced, provided that under no circumstance shall the shoreline setback line be less than forty (40) feet;

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding does not enlarge the structure beyond its previous building footprint nor intensify the use of the structure or its impacts on coastal processes, and the rebuilding is

not prohibited by Article 13, Chapter 8, Kaua'i County Code, 1987 as amended.

(B) In the case where the applicable shoreline setback line does not allow for the rebuilding of a lawfully existing dwelling unit upon a minimum building footprint, the commission may consider granting a variance under the following guidelines only:

(i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(iii) The buildable footprint may be reduced to below 2100 square feet.

(iv) If the foregoing approaches (a), (b) and (c) are done to the maximum extent practicable and a buildable footprint of 1500 is not feasible, the shoreline setback may be reduced provided that under no circumstances shall the shoreline setback line be less than twenty (20) feet from the certified shoreline, and for any reduction below thirty (30) feet, a qualified professional consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding.

(b) A structure or activity may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the shoreline setback rules;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the shoreline setback rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code, and Drainage, Chapter 22, Article 16, Kaua'i County Code, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

#### Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this article in accordance with Section 8-3.5(a) of the County of Kaua'i Comprehensive zoning Ordinance. HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of a unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Section 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater public harm than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted thereunder, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction

(f) The Director shall enforce this article in accordance with Section 8-3.5(a) of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A.

#### Sec. 8-27.12 Civil fines.

(a) Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32. Where a structure is built without permits and the Director, in following the procedures outlined in Section 8-27.11(a), determines that removal of the structure would cause a greater public harm, a mandatory penalty of one thousand dollars (\$1,000) shall be imposed, plus, in the discretion of the Director, between ten percent (10%) to one hundred percent (100%) of the estimated construction cost of the unpermitted structure shall be imposed as a penalty, considering factors such as percentage of completion, scope of work, and number of offenses.

(b) Any penalty paid pursuant to this section shall be deposited by the Director of Finance into the Planning Department's budget and shall be used for the enforcement and/or education relating to this Article.

#### Sec. 8-27.13 Appeal of Director's decision.

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval or Denial by the Director to the Commission. The potential appellant shall file a notice of appeal with the Director and the Commission within fifteen (15) days after the adverse decision. Within twenty (20) days of said filing, the commission shall determine the potential appellant's standing to appeal. If the commission grants standing to appeal, the commission shall follow the procedure outlined in Chapter 9 of The Rules of Practice and Procedure of the County of Kaua'i Planning Commission. The Planning Commission's decision may be appealed to the Circuit Court pursuant to HRS Chapter 91 and the aforementioned rules.



#### Sec. 8-27.14 Promulgation of Rules and Regulations.

This ordinance shall supersede the Shoreline Setback Rules and Regulations of the Planning Department of the County of Kaua'i in existence at the time of adoption of this ordinance. Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article.]

“Sec. 8-27.0 Purpose. The purpose of this Article is to protect life and property, ensure the longevity and integrity of Kaua'i's coastal and beach resources along Kaua'i's shoreline and to strengthen shoreline setback requirements in this Article by incorporating science-based erosion rates established in the Kaua'i Coastal Erosion Study and current coastal hazard mitigation best practices and strategies.

#### Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kaua'i, that are:

(a) Abutting the shoreline where structures and/or prohibited activities are proposed within five hundred (500) feet of the shoreline, or

(b) Not abutting the shoreline where structures and/or prohibited activities are proposed within approximately five hundred fifty (550) feet of the shoreline.

#### Sec. 8-27.2 Definitions.

For purposes of this Article unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

“Adversely affect beach processes” means to pose a potential immediate or future adverse effect on beach processes as a result of a structure and/or landscaping located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

“Annual coastal erosion rate” means the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012). Annual coastal erosion rates are available for all lots on Kaua'i fronted by a sandy beach from the Kaua'i Planning Department. These rates were calculated by the University of Hawaii's Coastal Geology Group for the Kaua'i Coastal Erosion Study (2010). The Planning Director may designate a qualified professional to review and, subject to the Planning Director's approval, update annual coastal erosion rates.

“Average lot depth” means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly

shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

“Board” shall mean the Board of Land and Natural Resources, State of Hawai‘i.

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

“Certified Shoreline” means the shoreline established by Board pursuant to HRS 205A-42, as amended.

“Coastal Dune” means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

“Coastal erosion” means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

“Coastal erosion hazard zone” shall include all of the land between the shoreline and the shoreline setback line.

“Coastal hazard” means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

“Commission” means the Planning Commission of the County of Kaua‘i.

“Department” means the Planning Department of the County of Kaua‘i.

“Director” means the Planning Director of the Planning Department of the County of Kaua‘i.

“Dwelling Unit” means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard Assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawai‘i Coastal Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai‘i,

Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai'i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration.

"Kaua'i Coastal Erosion Study" means a quantitative study of Kaua'i and Ni'ihau's historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF). The study was conducted by the University of Hawai'i's Coastal Geology Group for the County of Kaua'i. The shoreline change data and shoreline change posters produced by this study are on file with the Kaua'i Planning Department. The study followed procedures described in the 'National Assessment of Shoreline Change: Historic Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2010) available from the Kaua'i Planning Department.

"Landscaping" means the modification of landscape for an aesthetic or functional purpose that includes the planting of vegetation; the installation of irrigation, rock or water features; grading or grubbing.

"Makai" means seaward or in a seaward direction.

"Mauka" means landward or in a landward direction.

"Minimum buildable footprint" means a building footprint of one thousand five hundred (1,500) square feet.

"Minor structure" means:

(1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua'i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

(2) a structure that:

(A) costs less than \$125,000; and

(B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

(C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

(D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbecues, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety

improvements, lifesaving devices, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are located more than forty (40) feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawai‘i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42 USC 5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

(1) Was completely built, in its present form, prior to June 22, 1970;

or

(2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or

(3) Was outside the shoreline setback area when it received either a building permit or board approval; or

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1” = 20’ 0” that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawaii and shall consist of data including but not limited to:

(1) Property boundaries;

(2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;

(3) Topography in and around the proposed construction;

(4) Any and all shoreline hardening;

(5) Flood zones, where applicable;

(6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;

(7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;

(8) A geo-referenced survey of the site; and

(9) Any other information which identifies the existing condition of the subject parcel of land.

“Primary Coastal Dune” means the first dune encountered mauka of the beach.

“Prohibited Activities” means those activities prohibited in the shoreline setback area as provided in Section 8-27.6 of this Article. All other activities shall be regulated by the Special Management Area Rules and Regulations of the County of Kauaʻi and the requirements of HRS Chapter 343-5 regarding environmental assessments for any proposed uses within a shoreline area as defined in Section 205A-41.

“Qualified consultant” means a coastal scientist with a master of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawaiʻi that has experience in coastal processes. If a dune restoration project is proposed, the qualified consultant shall have experience and expertise with dune restoration.”

“Qualified Demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer, or-architect at fifty percent (50%) or more of the current replacement cost of the structure.

“Repair” means the fixing or regular maintenance of a lawfully existing structure that does not result in an addition to, or enlargement or expansion of, the lawfully existing structure. A “substantial improvement” as defined herein shall not be considered a repair.

“Revetment” shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky Shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Shoreline” is as defined in Section 205A-1, Hawaiʻi Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawaiʻi Revised Statutes, as amended.

“Shoreline Hardening” means the process of fortifying the shoreline or shoreline setback area with hard structures including, but not limited to, seawall and revetments.

“Shoreline Change Reference Feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

“Shoreline setback area” means “shoreline area” as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Shoreline setback line” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Storm buffer zone” is the first forty feet (40’) of the shoreline setback area as measured from the shoreline.

“Structure” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Substantial construction” means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

“Substantial improvement” means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a ten (10) year period, where the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the first improvement during that ten (10) year period. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The value of any substantial improvement shall be determined by the County Engineer or his/her authorized representative. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

“Temporary structures” means structures that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

“Use” means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

### **Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.**

Shoreline setback determinations shall be issued based on the following procedures:

(a) Except in either of the following two cases and except as permitted in Section 8-27.7, a shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article.

(1) In cases where the proposed structure or subdivision satisfies the following four criteria:

(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) V or VE flood zones;

(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above mean sea level or greater;

(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline and that it will not affect or be affected by coastal erosion or hazards; and

(D) The shoreline setback shall be sixty (60) feet from the certified shoreline which has been established not more than twelve (12) months from the date of the application for the exception under this section.

(2) In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(b) Unless otherwise provided in subsection (a) above, no shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a certified shoreline issued within twelve (12) months prior to submission of the application.

(c) Lots Included in the Kaua'i Coastal Erosion Study. For all structures on lots subject to the Kaua'i Coastal Erosion Study, the setback shall be calculated as follows:

(1) For lots with an average lot depth of less than one hundred forty (140) feet, the setback line shall be forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(2) For lots with an average lot depth of one hundred forty (140) feet to two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot

additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback determined by taking the average lot depth, subtracting one hundred (100) feet, dividing by two and adding forty (40) feet.

(3) For all lots with an average lot depth of over two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty feet (40) plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of one hundred (100) feet from the certified shoreline.

Table 1. (This table is included for illustrative purposes only.) Lots Included in the Kaua'i Coastal Erosion Study. The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

<u>Average Lot Depth</u>	<u>Setback Line</u>
<u>Less than 140 feet</u>	<u>40 feet plus (70 X annual coastal erosion rate) plus 20 feet</u>
<u>140 feet to 220 feet</u>	<u>Greater of:</u> <u>40 feet plus (70 X annual coastal erosion rate) plus 20 feet</u> <u>-or-</u> <u>(Average Lot Depth minus 100 feet) ÷ by 2 plus 40 feet</u>
<u>Greater than 220 feet</u>	<u>Greater of:</u> <u>40 feet plus (70 X annual coastal erosion rate) plus 20 feet</u> <u>-or-</u> <u>100 feet from the certified shoreline</u>

(d) Lots Not Included in the Kaua'i Coastal Erosion Study. For all structures on lots that were not included in the Kaua'i Coastal Erosion Study, the setback shall be calculated by the following formula, (Average Lot Depth -100)/2 +40), subject to the following:

(1) For lots with naturally occurring rocky shorelines, the shoreline setback line shall be no less than 40 feet.

(2) For all other lots, the shoreline setback line shall be no less than 60 feet.

(3) For all lots, the maximum setback that can be required shall be 100 feet.



(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot within approximately five hundred fifty (550) feet of the shoreline, the Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

(f) No subdivision which involves a lot, or any portion of a lot that would be subject to this Article, shall be approved without a coastal erosion study, a certified shoreline, and a shoreline setback line established in accordance with this Article, unless the subdivision is initiated by the County.

(g) Any subdivision with lots abutting the shoreline approved pursuant to Chapter 9 of the Kaua'i County Code, 1987, as amended, after the adoption of this Ordinance shall have a shoreline setback line of forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(h) Each lot abutting the shoreline in a subdivision approved after the effective date of this ordinance shall be designed to achieve a building footprint of five thousand (5,000) square feet of buildable area *mauka* of the shoreline setback line established in accordance with subsections (f) and (g), above.

(i) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(j) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

#### **Sec. 8-27.4 Minimum Shoreline Setback Requirements.**

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

#### **Sec. 8-27.5 Applicable Laws.**

The requirements of this Article shall not abrogate the requirements of Hawai'i Revised Statutes Chapter 205A, Hawai'i Revised Statutes Chapter 343-5, the Special Management Area Rules and Regulations of the County of Kaua'i, or any other applicable statutes, codes, ordinances, rules and regulations, or other law.

#### **Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.**

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

(1) The inadvertent taking from the shoreline setback area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;

(2) Where the mining or taking is authorized by a variance pursuant to Section 205A-46 of the Hawai'i Revised Statutes;

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;

(5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;

(6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawai'i State Constitution; or

(7) For the response to a public emergency or a state or local disaster.

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance.

(c) The following are prohibited in the shoreline setback area:

(1) Individual wastewater system or subsurface improvement unless the applicant demonstrates to the satisfaction of the Director that no feasible alternative exists, including a redesign of the improvement or structure to accommodate the system outside of the setback line, and the system or improvement complies with all statutory and Department of Health requirements.

(2) Landscaping that artificially fixes the shoreline.

(3) Shoreline hardening unless it is approved by the State of Hawai'i's Office of Conservation and Coastal Lands.

(4) Expansion of the footprint of a non-conforming structure, unless otherwise provided by law.

**Sec. 8-27.7 Permitted structures within the shoreline setback area.**

(a) The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in this section are prohibited without a variance.

(1) Existing conforming and nonconforming structures/activities.

(2) Structure or activity that received a shoreline variance or administrative approval prior to February 26, 2008.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.

(5) A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes;

(B) The repairs do not constitute a substantial improvement of the structure; and

(C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure approved by the Director as a minor structure.

(9) Qualified demolition of existing structures.

(10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.

(11) Scientific studies and surveys, including archaeological surveys.

(12) Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.

(13) Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within thirty (30) days following the completion of the film production.

(14) Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai'i Revised Statutes.

(b) The following conditions shall apply to any new structure permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty feet (40') from the shoreline.

(4) Unless otherwise provided, all new structures and/or landscaping shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade of the shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along the shoreline.

(6) The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

#### **Sec. 8-27.8 Procedures For Obtaining Determinations.**

(a) Unless as otherwise provided in this Article, any structure proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this Article.

(b) A proposed structure in the shoreline setback area or within five hundred feet (500') of the shoreline shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure.

(1) A request for determination for a proposed structure within the shoreline setback area or within five hundred (500) feet of the shoreline shall be submitted to the Department on a form prescribed by the Director.

(2) For public structures whose valuation does not exceed \$125,000.00 and repairs to lawfully existing private structures as delineated in Section 8-27.7(a), the request shall include construction and site plans, and written text addressing compliance with the criteria set forth in this Article.

The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(3) For public structures whose valuation exceeds one hundred twenty-five thousand dollars (\$125,000.00) and private structures unless delineated in Sec. 8-27.7(a), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Sec. 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, existing and final contours, photographs, and a written text addressing compliance with the criteria set forth in this Article. The Director may also require a hazard assessment.

(4) Within sixty (60) days from the day the application is deemed complete by the Director, the Director shall make a decision in accordance with the criteria set forth in this Article that the proposed structure is:

- (A) Permitted under Section 8-27.7;
- (B) Permitted under Section 8-27.7 and subject to conditions;
- (C) Not permitted under Section 8-27.7;
- (D) Outside of the shoreline setback area; or
- (E) Not subject to Section 8-27.3.

(5) All applications for a shoreline setback determination or determination of exemption deemed complete by the Director shall be posted within ten (10) working days to a publicized website maintained by the Department.

(6) The Director shall notify the Commission at the Commission's next regularly scheduled meeting of the following:

(A) any shoreline setback determinations for approval of a structure proposed within the shoreline setback area or within five hundred (500) feet of the shoreline;

(B) any approvals or denials by the Director of structures and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure, and a discussion of the factors considered in making the decisions; and

(C) any decision by the Director to not require a shoreline setback determination pursuant to Section 8-27.3, except with regard to repairs to structures permitted pursuant to Section 8-27.7(a)(6).

(7) All shoreline setback determinations made by the Director shall include, but are not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures depicted on a plan drawn to scale, the purpose of the proposed structures, the current certified shoreline (if required), the setback calculations and setback line drawn on the plan, and copies of a coastal erosion study, if applicable. If the Director, pursuant to Section 8-27.3, make a determination of exemption, the Director shall state the justification in writing.

(8) Except with regard to repairs to structures permitted pursuant to Section 8-27.7(a)(6), the Director's decisions pursuant to Section 8-27.8(c)(4) shall not be final until posted on the Commission's agenda. Notwithstanding the posting of the decision, if there is an appeal from the Director's decision, the decision shall not be final until the Commission completes its decision-making on the appeal.

(9) Minor structures shall be completed within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(10) For any non-minor structures allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as

evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the Director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per shoreline change rates as provided in the Kaua'i Coastal Erosion Study. In all other cases where substantial construction has not occurred by the deadline, a new certified shoreline and setback determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i, HRS Chapter 205A, as amended, or HRS Chapter 343-5, as amended.

(e) Fees. A nonrefundable processing fee of one hundred dollars (\$100.00) shall accompany a request for determination.

#### **Sec. 8-27.9 Variance application.**

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) A non-refundable administrative application fee of three hundred dollars (\$300.00).

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure and/or landscaping is to be located;

(5) A site plan of the shoreline setback area, drawn to scale, showing:

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the director; and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the Director.

(b) Upon a determination by the Director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the Commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the Commission prior to the matter appearing on an agenda of the Commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the Commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;



(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five (25) calendar days after public notice of the application. For the purposes of this section “public notice of the application” shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua‘i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the Commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

#### **Sec. 8-27.10 Criteria for approval of a variance.**

(a) A shoreline setback area variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Landscaping; provided that, the commission finds that the proposed structure will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline and is in compliance with HRS Section 115-5;

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Structures by public agencies or public utilities regulated under HRS Chapter 269;

(7) Private and public structures that are clearly in the public interest;

(8) Private and public structures which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the Commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private and public structures that may artificially fix the shoreline but not adversely affect beach processes; provided that, the Commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The Commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the minimum buildable footprint does not allow for a setback in accordance with this Article, the Commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint shall be reduced to no less than one thousand (1,000) square feet.

(D) If the foregoing approaches in subsections (A), (B) and (C) are done to the maximum extent practicable, the calculated shoreline setback may be reduced to the minimum extent required to permit the construction of a house within the reduced footprint, provided that a qualified consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding. Under no circumstance shall the shoreline setback line be less than forty (40) feet.

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code 1987, as amended and does not:

(i) enlarge the structure beyond its previous building footprint, and

(ii) intensify the use of the structure or its impacts on coastal processes.

(B) In the case where the minimum buildable footprint does not allow for a setback of forty (40) feet, the Commission may consider granting a variance under the following guidelines only:

(i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(iii) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint may be reduced to the lesser of one thousand (1,000) square feet or the actual footprint of the house.

(b) A structure may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the provisions of the provisions of this Article;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the provisions of this Article; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the provisions of this Article.

(c) Before granting a hardship variance, the Commission shall find that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. The Commission shall consider factors such as coastal hazards, shoreline conditions, erosion, surf inundation, flood conditions and the geography of the lot in determining whether the proposal is a reasonable use of the applicant's land. The Commission shall give due consideration to the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012) and any amendments thereto, or Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook (Hwang, 2005) and any subsequent amendments thereto.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code 1987, as amended,

and Drainage, Chapter 22, Article 16, Kaua'i County Code 1987, as amended, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

(j) In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits.

#### **Sec. 8-27.11 Enforcement.**

(a) The Director shall enforce this article in accordance with Article 24 of the County of Kaua'i Comprehensive zoning Ordinance. HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of a unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater harm to the ecosystem and/or public improvements than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the Director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The Director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted there under, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction

(f) The Director shall enforce this article in accordance with Article 24 of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A.

#### **Sec. 8-27.12 Civil fines.**

Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32 and Section 8-3.5 of this Chapter.

#### **Sec. 8-27.13 Appeal of the Director's Determination.**

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director to the Commission in accordance with the Commission's Rules of Practice and Procedure.

**Sec. 8-27.14 Promulgation of Rules and Regulations.**

Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article.”

(Material to be deleted is bracketed. New material to be added is underscored.)

(November 19, 2014)

FLOOR AMENDMENT

Bill No. 2557, Draft 2, Relating to Real Property Taxes (*Low Income Tax Credit*)

Introduced by: JOANN A. YUKIMURA (By Request)

Amend Bill No. 2557, Draft 2 in its entirety to read as follows:

“SECTION 1. Purpose. The purpose of this Bill is to provide a low income tax credit for individuals whose household income, meaning the total gross income of [all titleholders] persons residing on the property for the preceding tax year, does not exceed fifty percent (50%) of the Kaua‘i median household income as set forth in the Kaua‘i County Housing Agency Affordable Rental Housing Guideline. This is in response to the significant property tax increases for certain homeowners who were affected by the removal of the Permanent Home Use Tax Limit, the increase to certain real property tax rates, and the increase in assessed values, all simultaneously.

SECTION 2. Section 5A-11.4 of the Kaua‘i County Code 1987, as amended, is hereby amended as follows.

“(a) Real property owned and occupied only as the taxpayer’s principal home, as of the date of assessment by any individual or individuals, shall be exempt only to the following extent from property taxes:

(1) Totally exempt where the value of the property is not in excess of one hundred sixty thousand dollars (\$160,000.00);

(2) Where the value of such property is in excess of one hundred sixty thousand dollars (\$160,000.00), the exemption shall be the amount of one hundred sixty thousand dollars (\$160,000.00).

Provided:

(A) That no such exemption shall be allowed to any corporation, copartnership, or company;

(B) That the exemption shall not be allowed on more than one (1) home for any one (1) taxpayer;

(C) That where the taxpayer has acquired the taxpayer’s home by a deed, the deed shall have been recorded on or before September 30th immediately preceding the year for which the exemption is claimed;

(D) That a husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart, in which case they shall be entitled to one (1) exemption, to be apportioned between each of their respective homes in proportion to the value thereof;

(E) That a person living on-premises, a portion of which is used for commercial purposes, shall [receive the exemption applicable to the entire property, but shall be classified and taxed at the highest applicable use rate as determined by the tax rates set for each use class from the prior year.] be placed in the commercialized home use class.

(b) Where two (2) or more individuals jointly, by the entirety, or in common, own or lease land on which their homes are located, each home, if otherwise qualified for the exemption granted by this Section, shall receive the exemption. If a portion of land held jointly, by the entirety, or in common by two (2) or more individuals, is not qualified to receive an exemption, such disqualification shall not affect the eligibility for an exemption or exemptions of the remaining portion.

(c) For a taxpayer who is at least sixty (60) years of age, but not yet seventy (70) years of age, the amount of one hundred eighty thousand dollars (\$180,000.00) shall replace the exemption amount referenced in Subsection (a). For a taxpayer who is seventy (70) years of age or over, the amount of two hundred thousand dollars (\$200,000.00) shall replace the exemption amount referenced in Subsection (a).

For the purpose of this Subsection, a husband and wife who own property jointly, by their entirety, or in common, on which a home exemption under the provisions of Subsection (a) of this Section has been granted, shall be entitled to the home exemption set forth above when at least one (1) of the spouses reaches the applicable age.

(d) Real property which has a homeowner's exemption under this Section shall be entitled to an additional exemption not to exceed one hundred twenty thousand dollars (\$120,000.00), provided that the annual income of the owner occupant does not exceed eighty percent (80%) of the Kaua'i median household income as set forth in the Kaua'i County Housing Agency Affordable Rental Housing Guideline for the calendar year preceding the year in which the application is filed. The eighty percent (80%) shall be rounded up to the nearest hundred.

(1) For the purposes of this Subsection, the following definitions shall apply:

"Income" shall mean the Federal gross income as defined in the Internal Revenue Code of the United States of 1954, as amended, including all nontaxable income, including, but not limited to, (1) tax-exempt interest received from the Federal government or any of its instrumentalities; (2) the gross amount of any IRA distribution, pension or annuity benefits received (including Railroad Retirement Act benefits and veterans disability pensions), excluding rollovers; (3) all payments received under the Federal Social Security and State unemployment insurance laws; (4) nontaxable contributions to public or private pension, annuity and/or deferred compensation plans; and (5) Federal cost of living allowances. "Income" shall



include gross rental income and gross capital gains. All income set forth in the tax return filed by the owner-occupant, whether the tax return is a joint tax return or an individual tax return, shall be considered the owner-occupant's income. "Income" does not include nonmonetary gifts from private sources, or surplus foods or other relief in kind provided by public or private agencies.

"Owner-occupant" shall mean all persons living in the dwelling to be exempted under this Section who are owners of that dwelling as defined in Section 5A-7.1, provided that in cases where husband and wife both occupy the dwelling but only one (1) spouse is an owner, the income of both spouses shall be considered in determining eligibility under this Section.

(2) Income from the calendar year preceding the year in which the application is filed shall be the basis for qualification under this Subsection.

(3) The additional home exemption shall be valid for one (1) tax year and it shall be the responsibility of the owner-occupant to annually file an application for the additional home-exemption on or before September 30th immediately preceding the year for which the exemption is claimed.

(4) The Director shall prescribe appropriate forms for applications and require proof of income which shall include, but is not limited to, the following:

(A) A copy of the State personal income tax returns or records for all owner-occupants which set forth their State gross income, and

(B) A copy of the Federal personal income tax returns for all owner-occupants which set forth their Federal gross income.

In the event that any of the owner-occupants were not required to file an income tax return pursuant to the Internal Revenue Code of the United States of 1954, as amended, or Hawai'i Revised Statutes, Chapter 235, as amended, the owner-occupant shall sign an affidavit stating the reason he or she was not required to file, and attesting to the amount of income received. The applicant may refuse to provide such proof or any additional information requested by the Director, but upon such refusal, the Director may deny the application and there shall be no appeal from such a denial.

The application form, which shall be signed by the owner-occupant(s), shall contain authorization to the State Department of Taxation and the Internal Revenue Service for release to the County Finance Director, a certified copy of the income tax records showing gross income. The Director may charge the

owner-occupant the applicable fee necessary to obtain said certified copies.

(5) The Director shall determine eligibility for the additional home exemption upon review and verification of each application. The Director shall notify each applicant whose application has been denied of such denial and the reasons for ineligibility on or before December 1st preceding the tax year.

(e) Low Income Tax Credit.

(1) When used in this Section, the following words and phrases shall have the following meaning unless it shall be apparent from the context that a different meaning was intended:

“Homeowner” means a person who filed and was granted a home exemption claim under Section 5A-11.4.

“Homeowner property” means the property with regard to which a homeowner filed and was granted a home exemption claim under Section 5A-11.4.

“Household income” means the total gross income of all persons residing on the property for the preceding tax year.

“Income” means the sum of Federal gross income as defined by the Internal Revenue Code of 1986, as amended, or the sum of Hawai'i gross income, as defined in Chapter 235 of Hawai'i Revised Statutes, as amended, whichever is greater.

(2) Upon proper application, a homeowner whose household income does not exceed fifty percent (50%) of the Kaua'i median household income as set forth in the Kaua'i County Housing Agency Affordable Rental Housing Guideline for the calendar year preceding the year in which the application is filed, shall be entitled to a credit in the amount that the real property tax assessed on the homeowner property for the current year exceeds three percent of the household income. In no event shall the real property tax due after the application of the credit be less than the minimum tax pursuant to Sec. 5A-6.3(g).

The credit shall be applied in equal pro rata amounts against each payment due for the next tax year following the year in which an application for credit is submitted and granted. No credit shall be applied if taxes on the property are delinquent.

(3) No credit shall be granted pursuant to this section unless an application for credit and proof of income is filed with the Department of Finance. Applications shall be submitted in a

form prescribed by the Director of Finance and include a U.S. Internal Revenue Service Form 4506-T. For the 2015 tax year only, applications shall be filed by January 15, 2015. For all subsequent tax years, all applications should be annually submitted by September 30 of the current year to be effective for the next fiscal year beginning on July 1.

(4) Credits granted pursuant to this section shall not be transferable to other persons or properties.

(5) The director may adopt rules and prescribe forms to implement this section.

[(e)] (f) In addition to any penalty provision set forth in Article 11, any person who files a fraudulent application or attests to any false statement, with intent to defraud or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the Department of Finance, shall be fined one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year or both.”

SECTION 3. If any provision of this Ordinance, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.”

(Material to be deleted is bracketed. New material is underscored.)

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(November 19, 2014)

FLOOR AMENDMENT

Bill No. 2557, Draft 2, Relating to Real Property Taxes (*Low Income Tax Credit*)

Introduced by: JOANN A. YUKIMURA (By Request)

Amend Bill No. 2557, Draft 2 in its entirety to read as follows:

“SECTION 1. Purpose. The purpose of this Bill is to provide a low income tax credit for individuals whose household income, meaning the total gross income of [all titleholders] persons residing on the property for the preceding tax year, does not exceed fifty percent (50%) of the Kaua‘i median household income as set forth in the Kaua‘i County Housing Agency Affordable Rental Housing Guideline. This is in response to the significant property tax increases for certain homeowners who were affected by the removal of the Permanent Home Use Tax Limit, the increase to certain real property tax rates, and the increase in assessed values, all simultaneously.

SECTION 2. Section 5A-11.4 of the Kaua‘i County Code 1987, as amended, is hereby amended as follows.

“(a) Real property owned and occupied only as the taxpayer’s principal home, as of the date of assessment by any individual or individuals, shall be exempt only to the following extent from property taxes:

(1) Totally exempt where the value of the property is not in excess of one hundred sixty thousand dollars (\$160,000.00);

(2) Where the value of such property is in excess of one hundred sixty thousand dollars (\$160,000.00), the exemption shall be the amount of one hundred sixty thousand dollars (\$160,000.00).

Provided:

(A) That no such exemption shall be allowed to any corporation, copartnership, or company;

(B) That the exemption shall not be allowed on more than one (1) home for any one (1) taxpayer;

(C) That where the taxpayer has acquired the taxpayer’s home by a deed, the deed shall have been recorded on or before September 30th immediately preceding the year for which the exemption is claimed;

(D) That a husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart, in which case they shall be entitled to one (1) exemption, to be apportioned between each of their respective homes in proportion to the value thereof;

(E) That a person living on-premises, a portion of which is used for commercial purposes, shall [receive the exemption applicable to the entire property, but shall be classified and taxed at the highest applicable use rate as determined by the tax rates set for each use class from the prior year.] be placed in the commercialized home use class.

(b) Where two (2) or more individuals jointly, by the entirety, or in common, own or lease land on which their homes are located, each home, if otherwise qualified for the exemption granted by this Section, shall receive the exemption. If a portion of land held jointly, by the entirety, or in common by two (2) or more individuals, is not qualified to receive an exemption, such disqualification shall not affect the eligibility for an exemption or exemptions of the remaining portion.

(c) For a taxpayer who is at least sixty (60) years of age, but not yet seventy (70) years of age, the amount of one hundred eighty thousand dollars (\$180,000.00) shall replace the exemption amount referenced in Subsection (a). For a taxpayer who is seventy (70) years of age or over, the amount of two hundred thousand dollars (\$200,000.00) shall replace the exemption amount referenced in Subsection (a).

For the purpose of this Subsection, a husband and wife who own property jointly, by their entirety, or in common, on which a home exemption under the provisions of Subsection (a) of this Section has been granted, shall be entitled to the home exemption set forth above when at least one (1) of the spouses reaches the applicable age.

(d) Real property which has a homeowner's exemption under this Section shall be entitled to an additional exemption not to exceed one hundred twenty thousand dollars (\$120,000.00), provided that the annual income of the owner occupant does not exceed eighty percent (80%) of the Kaua'i median household income as set forth in the Kaua'i County Housing Agency Affordable Rental Housing Guideline for the calendar year preceding the year in which the application is filed. The eighty percent (80%) shall be rounded up to the nearest hundred.

(1) For the purposes of this Subsection, the following definitions shall apply:

"Income" shall mean the Federal gross income as defined in the Internal Revenue Code of the United States of 1954, as amended, including all nontaxable income, including, but not limited to, (1) tax-exempt interest received from the Federal government or any of its instrumentalities; (2) the gross amount of any IRA distribution, pension or annuity benefits received (including Railroad Retirement Act benefits and veterans disability pensions), excluding rollovers; (3) all payments received under the Federal Social Security and State unemployment insurance laws; (4) nontaxable contributions to public or private pension, annuity and/or deferred compensation plans; and (5) Federal cost of living allowances. "Income" shall

include gross rental income and gross capital gains. All income set forth in the tax return filed by the owner-occupant, whether the tax return is a joint tax return or an individual tax return, shall be considered the owner-occupant's income. "Income" does not include nonmonetary gifts from private sources, or surplus foods or other relief in kind provided by public or private agencies.

"Owner-occupant" shall mean all persons living in the dwelling to be exempted under this Section who are owners of that dwelling as defined in Section 5A-7.1, provided that in cases where husband and wife both occupy the dwelling but only one (1) spouse is an owner, the income of both spouses shall be considered in determining eligibility under this Section.

(2) Income from the calendar year preceding the year in which the application is filed shall be the basis for qualification under this Subsection.

(3) The additional home exemption shall be valid for one (1) tax year and it shall be the responsibility of the owner-occupant to annually file an application for the additional home-exemption on or before September 30th immediately preceding the year for which the exemption is claimed.

(4) The Director shall prescribe appropriate forms for applications and require proof of income which shall include, but is not limited to, the following:

(A) A copy of the State personal income tax returns or records for all owner-occupants which set forth their State gross income, and

(B) A copy of the Federal personal income tax returns for all owner-occupants which set forth their Federal gross income.

In the event that any of the owner-occupants were not required to file an income tax return pursuant to the Internal Revenue Code of the United States of 1954, as amended, or Hawai'i Revised Statutes, Chapter 235, as amended, the owner-occupant shall sign an affidavit stating the reason he or she was not required to file, and attesting to the amount of income received. The applicant may refuse to provide such proof or any additional information requested by the Director, but upon such refusal, the Director may deny the application and there shall be no appeal from such a denial.

The application form, which shall be signed by the owner-occupant(s), shall contain authorization to the State Department of Taxation and the Internal Revenue Service for release to the County Finance Director, a certified copy of the income tax records showing gross income. The Director may charge the

owner-occupant the applicable fee necessary to obtain said certified copies.

(5) The Director shall determine eligibility for the additional home exemption upon review and verification of each application. The Director shall notify each applicant whose application has been denied of such denial and the reasons for ineligibility on or before December 1st preceding the tax year.

(e) Low Income Tax Credit.

(1) When used in this Section, the following words and phrases shall have the following meaning unless it shall be apparent from the context that a different meaning was intended:

“Homeowner” means a person who filed and was granted a home exemption claim under Section 5A-11.4.

“Homeowner property” means the property with regard to which a homeowner filed and was granted a home exemption claim under Section 5A-11.4.

“Household income” means the total gross income of all persons residing on the property for the preceding tax year.

“Income” means the sum of Federal gross income as defined by the Internal Revenue Code of 1986, as amended, or the sum of Hawai‘i gross income, as defined in Chapter 235 of Hawai‘i Revised Statutes, as amended, whichever is greater.

(2) Upon proper application, a homeowner whose household income does not exceed fifty percent (50%) of the Kaua‘i median household income as set forth in the Kaua‘i County Housing Agency Affordable Rental Housing Guideline for the calendar year preceding the year in which the application is filed, shall be entitled to a credit in the amount that the real property tax assessed on the homeowner property for the current year exceeds three percent of the household income. In no event shall the real property tax due after the application of the credit be less than the minimum tax pursuant to Sec. 5A-6.3(g).

The credit shall be applied in equal pro rata amounts against each payment due for the next tax year following the year in which an application for credit is submitted and granted. No credit shall be applied if taxes on the property are delinquent.

(3) No credit shall be granted pursuant to this section unless an application for credit and proof of income is filed with the Department of Finance. Applications shall be submitted in a



form prescribed by the Director of Finance and include a U.S. Internal Revenue Service Form 4506-T. For the 2015 tax year only, applications shall be filed by January 15, 2015. For all subsequent tax years, all applications should be annually submitted by September 30 of the current year to be effective for the next fiscal year beginning on July 1.

(4) Credits granted pursuant to this section shall not be transferable to other persons or properties.

(5) The director may adopt rules and prescribe forms to implement this section.

[(e)] (f) In addition to any penalty provision set forth in Article 11, any person who files a fraudulent application or attests to any false statement, with intent to defraud or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the Department of Finance, shall be fined one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year or both.”

SECTION 3. If any provision of this Ordinance, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

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